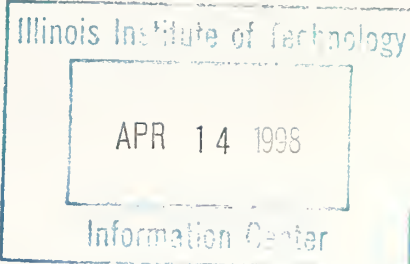


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**1998**

# ***Illinois Register***

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## **Rules of Governmental Agencies**

Volume 22, Issue 15—April 10, 1998

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**Editor's Note:** The Cumulative Index and Sections Affected Index will be printed on a quarterly basis. The printing schedule for the quarterly and annual indexes are as follows:

April 17, 1998 - Issue 16: Through	March 31, 1998
July 17, 1998 - Issue 29: Through	June 30, 1998
October 16, 1998 - Issue 42: Through	September 30, 1998
January 15, 1999 - Issue 3: Through	December 31, 1998 (Annual)



DEPARTMENT OF AGRICULTURE

NOTICE OF PROPOSED AMENDMENT(S)

- 1) Heading of the Part: Civil Administrative Code
- 2) Code Citation: 8 Ill. Adm. Code 3
- 3) Section Numbers: Proposed Action:  
 3.10 Amended  
 3.20 Amended  
 3.30 Amended  
 3.40 Amended  
 3.50 Amended  
 3.60 Amended  
 3.70 Amended  
 3.80 Amended  
 3.90 Amended  
 3.100 Amended  
 3.110 Amended  
 3.120 Amended  
 3.130 Amended  
 3.140 Amended  
 3.180 Repealed  
 3.190 Repealed  
 3.200 Repealed  
 3.210 Repealed  
 3.220 Repealed  
 3.230 Repealed
- 8) Does this proposed amendment contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: Rule does not affect units of local governments.
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: A 45-day written comment period for receiving comments from the public will begin on the day this notice of rulemaking appears in the *Illinois Register*. Please mail written comments on the proposed rulemaking to the attention of:

Debbie Wakefield  
 Department of Agriculture  
 State Fairgrounds, P.O. Box 19281  
 Springfield IL 62794-9281  
 217/785-5713  
 Facsimile: 217/785-4505

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: Feeder swine dealers, livestock dealers, slaughter livestock buyers, livestock auction markets, personal property warehouses, and commercial pesticide applicators.
- B) Reporting, bookkeeping or other procedures required for compliance:  
 No additional procedures are required for compliance.
- C) Types of professional skills necessary for compliance: No additional professional skills are necessary.

13) Regulatory agenda on which this rulemaking was summarized: July 1997

The full text of the Proposed Amendments begins on the next page:

DEPARTMENT OF AGRICULTURE

NOTICE OF PROPOSED AMENDMENT(S)

- 4) Statutory Authority: Section 40.23 of the Civil Administrative Code of Illinois [20 ILCS 205/40.23]; Section 16 of the Illinois Feeder Swine Dealer Licensing Act [225 ILCS 620/16]; Sections 15, 16 and 16.1 of the Illinois Livestock Dealer Licensing Act [225 ILCS 645/15, 16 and 16.1]; Sections 4 and 4.1 of the Slaughter Livestock Buyers Act [225 ILCS 655/4 and 4.1]; Section 14 of the Slaughter Livestock Buyers Act [225 ILCS 655/14]; Section 3 of the Livestock Auction Market Law [225 ILCS 640/3]; Section 8 of the Illinois Pesticide Act [415 ILCS 60/8]; and Section 16 of the Personal Property Storage Act [240 ILCS 10/16].
- 5) A Complete Description of the Subjects and Issues Involved: References to the Illinois Compiled Statutes are added, and Ill. Adm. Code citations are corrected. Procedures and other information concerning grain warehouse/dealer claimants are either being stricken or repealed since that information is covered in the Grain Code [240 ILCS 40]. In Subpart B, language concerning collateral is clarified, and collateral acceptable to the Department is specified in each of the enabling statutes.
- 6) Will this proposed rule replace an emergency rule in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No

## DEPARTMENT OF AGRICULTURE

## NOTICE OF PROPOSED AMENDMENT(S)

TITLE 8: AGRICULTURE AND ANIMALS  
CHAPTER I: DEPARTMENT OF AGRICULTURE  
SUBCHAPTER a: GENERAL RULES

## PART 3

## CIVIL ADMINISTRATIVE CODE

SUBPART A: PROCEDURE FOR THE COLLECTION,  
CONTROL AND DISTRIBUTION OF SURETY BONDS RECEIVED BY THE  
DIRECTOR OF THE ILLINOIS DEPARTMENT  
OF AGRICULTURE ACTING AS TRUSTEE  
ON BEHALF OF THE CLAIMANTS

## Section

- 3.10 Bonding
- 3.20 Investigation and Audit by Trustee
- 3.30 Valid Claims
- 3.40 Hearing to Verify Claimants and Claim Amounts
- 3.50 Trust Accounts
- 3.60 Administrative Hearings
- 3.70 Cancellation of Surety Bond

SUBPART B: PROCEDURE FOR THE COLLECTION,  
CONTROL AND DISTRIBUTION OF COLLATERAL CERTIFICATES-OF-DEPOSIT  
AND-OTHER-SECURITY FILED IN LIEU OF A SURETY BOND WITH  
THE DIRECTOR OF THE ILLINOIS DEPARTMENT  
OF AGRICULTURE ACTING ON BEHALF OF CLAIMANTS

## Section

- 3.80 Investigation and Audit by Trustee
- 3.90 Collateral Certificate-of-Deposit-Guarantee-Agreement-and-Other-Types  
of-Pledged-Security
- 3.100 Valid Claims
- 3.110 Hearing to Verify Claimants and Claim Amounts
- 3.120 Dispute of Claims by Licensee/Registrant
- 3.130 Release of Payment to Claimants
- 3.140 Return of Collateral Certificate-of-Deposit-Guarantee-Agreement-and/or  
Pledged-Security When There Is No Business Failure

SUBPART C: PROCEDURE FOR THE COLLECTION, CONTROL  
AND DISTRIBUTION OF GRAIN AND OTHER ASSETS RECEIVED BY THE  
DIRECTOR OF THE ILLINOIS DEPARTMENT OF  
AGRICULTURE ACTING AS TRUSTEE ON BEHALF  
OF THE CLAIMANTS

## Section

- 3.180 Investigation and Audit by Trustee (Repealed)
- 3.190 Valid Claims (Repealed)

## DEPARTMENT OF AGRICULTURE

## NOTICE OF PROPOSED AMENDMENT(S)

- 3.200 Hearing to Verify Claimants and Claim Amounts (Repealed)
- 3.210 Dispute of Claims by Licensee/Registrant (Repealed)
- 3.220 Release of Assets to Claimants (Repealed)
- 3.230 Disposition of Assets; Trust Accounts (Repealed)

AUTHORITY: Implementing and authorized by Section 40-2.3 of the Civil Administrative Code of Illinois [20 ILCS 205/40.23]; implementing Section 16 of the Illinois Feeder Swine Dealer Licensure Act [225 ILCS 620/16]; implementing and authorized by Sections 15, 16 and 16.1 of the Illinois Livestock Dealer Licensing Act [225 ILCS 645/15, 16 and 16.1]; implementing Sections 4 and 4.1 of the Slaughter Livestock Buyers Act [225 ILCS 655/4 and 4.1]; implementing Section 14 of the Slaughter Livestock Buyers Act [225 ILCS 655/14]; implementing Section 3 of the Livestock Auction Market Law [225 ILCS 640/3]; implementing and authorized by Section 16 of the Illinois Pesticide Act [415 ILCS 60/8]; implementing and authorized by Section 16 of the Personal Property Storage Act [240 ILCS 10/16].

SOURCE: Rules and Regulations Relating to the Civil Administrative Code, filed December 16, 1975, effective December 17, 1975; amended October 18, 1977, effective October 28, 1977; codified at 5 Ill. Reg. 10433; amended at 8 Ill. Reg. 516, effective January 1, 1984; amended at 10 Ill. Reg. 4296, effective February 21, 1986; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: PROCEDURE FOR THE COLLECTION,  
CONTROL AND DISTRIBUTION OF SURETY BONDS RECEIVED BY THE  
DIRECTOR OF THE ILLINOIS DEPARTMENT  
OF AGRICULTURE ACTING AS TRUSTEE  
ON BEHALF OF THE CLAIMANTS

## Section 3.10 Bonding

Pursuant to the Acts listed in Section 40-2.3 of the Civil Administrative Code of Illinois [20 ILCS 205/40.23] (Illinois Revised Statutes, Chapter 127, par. 40-2.3) and the rules promulgated for the administration of the Acts, certain license holders or registrants are required to post a Surety Bond being a commercial Surety Bond or pledge other security for the purpose of providing a fund to satisfy certain specific creditors in the event of a failure. The Surety Bond shall be executed on forms supplied by the Department. Every bond shall be signed by the licensee/registrant in the same manner as the application for license/registration, acknowledged before a notary public, and if the application is a corporation, the corporate seal shall be affixed thereto.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

## Section 3.20 Investigation and Audit by Trustee

## DEPARTMENT OF AGRICULTURE

## NOTICE OF PROPOSED AMENDMENT(S)

- a) When there is a failure of a licensee/registrant for which a Surety Bond has been posted, the Trustee shall conduct an investigation and audit to accumulate claims and documents as may be available to support claims against the Surety Bond. At the same time as public notice is given in the newspaper, the Trustee shall give notice by certified or registered mail to the Surety posting the bond of the possibility that claims may be forthcoming against the bond. Within the first two weeks of its investigation, the Department of Agriculture shall place at least 3 notices in a newspaper in the business' licensed location informing persons with claims to submit them to the Department.
- b) When a failure occurs, if during the Department's examination or inspection, the examination or inspection reveals that the licensee/registrant is unable to meet the specific financial obligations as specified in the licensing/registration act, the Department of Agriculture shall give a written order of suspension in accordance with the provisions of the licensing/registration Act act.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 3.30 Valid Claims

- a) Claims to be valid against a Surety Bond held by the Trustee shall be defined as bona fide obligations covered by enabling statute and/or Section 40.23 of the Civil Administrative Code of Illinois which are filed by claimants within the statute of claims limitation as established by the enabling statute, if one prevails, or the Mechanics Lien Act [770 ILCS 60] "An Act relating to contractors' and material men's liens, known as mechanics' liens" (Ill. Rev. Stat. 1981-CH-1-027 par. 1-1 et seq.), or 30 285 days from the date the business is closed, whichever is less.
- b) The closing date of a business shall be the date the Illinois Department of Agriculture commences any audit which results in the closing of the business or the date the business failed, whichever occurs first.
- c) All claims determined as being valid claims by the Illinois Department of Agriculture shall be considered as valid claims for the purposes of filing a claim against the surety bond pledged.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 3.40 Hearing to Verify Claimants and Claim Amounts

The Trustee shall give at least a 10-day notice by registered or certified mail to the Surety posting the bond, the licensee/registrant, as well as to all known claimants, advising them of the date, time and place of the

## DEPARTMENT OF AGRICULTURE

## NOTICE OF PROPOSED AMENDMENT(S)

administrative hearing. A hearing to receive claims not previously submitted to the Trustee and to verify claimants and their amount shall be held by the Trustee in accordance with Section 3.60 of this Part 8-111-Adm-Code-3-60. Notice of the date, time and place of the hearing shall be published in the official state newspaper and once in a newspaper in the business' licensed location. In the event that the surety fails to object to any of the valid claims (8 Ill. Adm. Code 1.114 1-315), the surety shall pay within thirty-five (35) days from the date of the hearing officer's decision, to the Director of the Illinois Department of Agriculture, as Trustee, the amount of the surety bond ordered to be paid to the Director of the Illinois Department of Agriculture, as Trustee, for the purpose of paying the valid claims. When requested, the Trustee will provide a breakdown on how the trust account was distributed. The final administrative decision (see 8 Ill. Adm. Code 1.77(f) 1-754) and 1.124 1-348) shall be subject to judicial review in accordance with the Article-111, Administrative Review Law, Code of Civil Procedure [735 ILCS 5/Art. III] (Ill. Rev. Stat. 1981-CH-1107 par. 3-101 et seq.).

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 3.50 Trust Accounts

The Department of Agriculture shall establish and deposit funds received from a liquidated bond into an interest-bearing trust account in a federally insured financial institution until payment to claimants is made. The funds in a trust account shall be paid to claimants with valid claims by check written by the Department. An accounting of the funds which are deposited in the trust account shall be maintained by the Department on a separate accounting record for each trust account, identifiable as to the source of such funds, and any accrued interest shall be prorated among the identified funds in amounts equal to the same percentage as each identified fund is to the total of the trust account. Accrued interest from funds in a trust account shall be available for payment of valid claims. In determining the type of account in which to deposit bond proceeds, the Department shall consider interest rates, the anticipated period of time before payment to claimants with valid claims will be made, maturity dates, and any other factors which could affect the maximization of funds for the benefit of claimants. Reports shall be made to the Comptroller of funds held in such accounts in accordance with Section 16 of the State State Comptroller Act [15 ILCS 405/16] "4-111-Rev-Stat-1981-CH-157-par-216).

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 3.60 Administrative Hearings

Administrative hearings held by the Department are governed by the procedures established in the Illinois Administrative Procedure Act [5 ILCS 100] (Ill. Rev. Stat. 1981-CH-100).



DEPARTMENT OF AGRICULTURE

NOTICE OF PROPOSED AMENDMENT(S)

Rev--Stat--1991--eh--127--par--1001--i--et--seq-- and the Department's Administrative Rules (8 Ill. Adm. Code 1) which pertain to administrative proceedings, contested cases, petitions and availability of Department of Agriculture files for public disclosure. All decisions and actions of the Department of Agriculture are subject to the Illinois Administrative Procedure Act and the Department's Administrative Rules.

b) When a failure occurs, if--during--a--Department's--examination--or inspection--the--examination--or--inspection--reveals--that--the licensee/registrant--is--unable--to--meet--the--specific--financial obligations--as--specified--in--the--licensing/registration--act--the Department of Agriculture shall give a written order of suspension in accordance with the provisions of the licensing/registration act.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 3.90 Collateral Certificate of Deposit, Guarantee Agreement and Other Types of Pledged Security

a) Pursuant to the Acts listed in Section 40.23 of the Civil Administrative Code of Illinois and rules promulgated for the administration of such Acts, certain license holders or registrants are required to post surety bond or are permitted to pledge collateral acceptable to the Department a--Certificate--of--Deposit--or--other security for the purpose of providing a fund to satisfy certain specific creditors in the event of a failure.

b) Other--types--of--security--which--the--Department--of--Agriculture--will accept--include:

- 1) Guarantee--contract--prepared--in--accordance--with--the--Uniform Commercial Code--(Ill. Rev. Stat--1983--ch--267--par--1-101--et seq--and/or--mortgage--laws--(Ill. Rev. Stat--1983--ch--957--par--22b-51--et--seq--and-23--et--seq--relative--to--the--type--of--security being--pledged;
- 2) Letters--of--Credit--shall--be--in--accordance--with--Article--V--of--the Uniform--Commercial--Code--(Ill. Rev. Stat--1983--ch--267--par--5-101--et--seq--);--better--of--Credit--shall--be--executed--in accordance--with--the--format--supplied--by--the--Department;
- 3) Security--agreements--which--conform--with--Article--IX--of--the provisions--of--the--Uniform--Commercial--Code--(Ill. Rev. Stat--1983--ch--267--par--9-101--et--seq--);
- 4) Assignments--of--investment--securities--which--conform--with--Article VII--of--the--provisions--of--the--Uniform--Commercial--Code--(Ill. Rev. Stat--1983--ch--267--par--8-101--et--seq--);
- 5) Real-estate--mortgage--liens--which--conform--with--"An Act in relation to mortgages and trust deeds and the foreclosure thereof" (Ill. Rev. Stat--1983--ch--957--par--23--et--seq--).

bc) Collateral Certificates--of--Deposit--pledged--security--and--guarantee agreements shall be made payable to the Illinois Department of Agriculture, Director, as Trustee. The collateral Certificate of

DEPARTMENT OF AGRICULTURE

NOTICE OF PROPOSED AMENDMENT(S)

Rev--Stat--1991--eh--127--par--1001--i--et--seq-- and the Department's Administrative Rules (8 Ill. Adm. Code 1) which pertain to administrative proceedings, contested cases, petitions and availability of Department of Agriculture files for public disclosure. All decisions and actions of the Department of Agriculture are subject to the Illinois Administrative Procedure Act and the Department's Administrative Rules.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 3.70 Cancellation of Surety Bond

Persons having Surety Bonds filed with the Department of Agriculture shall use the following procedure in regard to cancellation of Surety Bonds:

a) Notice of cancellation shall be sent by certified or registered mail or written notification delivered personally to the Director of the Department of Agriculture, State Fairgrounds, P.O. Box 19281, Springfield, Illinois 62794-9281 62786. A copy of the notice of cancellation shall be delivered to the principal on the same day as notice is delivered to the Director.

b) Notice shall contain the Surety Bond number, amount of surety, and the name of principal.

c) The date of the notice of cancellation and the effective date of the termination of the bond shall be set as follows:

- 1) The date of notice of cancellation shall be the date the notice is received by the Department of Agriculture.
- 2) The effective date of termination of the bond can be no sooner than the date of notice plus the required notice period as established in the licensing act. The notice of cancellation shall not affect the liability accrued or which may accrue under such bond before the effective date of termination.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART B: PROCEDURE FOR THE COLLECTION, CONTROL AND DISTRIBUTION OF COLLATERAL CERTIFICATES-OF-DEPOSIT AND-OTHER-SECURITIES FILED IN LIEU OF A SURETY BOND WITH THE DIRECTOR OF THE ILLINOIS DEPARTMENT OF AGRICULTURE ACTING ON BEHALF OF CLAIMANTS

Section 3.80 Investigation and Audit by Trustee

a) When there is a failure of licensee/registrant for which collateral acceptable to the Department a--Certificate--of--Deposit--guarantee agreement--or--other--security has been pledged, the Trustee shall conduct an investigation and audit to accumulate claims and documents as may be available to support claims against the collateral

DEPARTMENT OF AGRICULTURE

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ef) In the event of a failure of any licensee or registrant and where the Department's investigation and-audit reveals claims against the collateral Certificate-of-Deposit---pledged---security---and-guarantee agreements---as-applicable, the Department of Agriculture shall liquidate the collateral Certificate-of-Deposit---pledged---securities and/or-guarantee---agreements to the extent necessary to satisfy claimants. The Department shall establish and deposit funds received from a liquidated collateral Certificate---of---Deposit---pledged securities---and/or-guarantee---agreements into an interest-bearing trust account in a federally insured financial institution until payment to claimants is made. The funds in a trust account shall be paid to claimants with valid claims by check written by the Department. An accounting of the funds which are deposited in the trust account shall be maintained by the Department on a separate accounting record for each trust account, identifiable as to the source of such funds, and any accrued interest shall be prorated among the identified funds in amounts equal to the same percentage as each identified fund is to the total trust account. Accrued interest from funds in a trust account shall be available for payment of valid claims. In determining the type of account in which to deposit trust funds, the Department shall consider interest rates, the anticipated period of time before payment to claimants with valid claims will be made, maturity dates and any other factors which could affect the maximization of funds for the benefit of claimants. Reports shall be made to the Comptroller of funds held in such accounts in accordance with the State Comptroller Act. When requested, the Trustee will provide a breakdown of how the trust account was distributed.

f9) In the event of a failure of a licensee/registrant and where the Department's investigation and-audit reveals no valid claims against the collateral Certificate-of-Deposit---pledged---security---or---guarantee agreement, the procedure as set forth in Section 3.140 shall be followed.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 3.100 Valid Claims

a) Claims to be valid against collateral a-Certificate-of-Deposit guarantee-agreement or pledged security held by the Trustee shall be defined as bona fide obligations covered by enabling statute and/or Section 40.23 of the The Civil Administrative Code of Illinois which are filed by claimants or which are disclosed by the-audit-made-by the Illinois Department of Agriculture. Any claim to be a valid claim against collateral a-Certificate-of-Deposit---guarantee---agreement---or pledged-security must be filed with the Department or disclosed by the Illinois Department of Agriculture in-its-audit within the statute of claims limitation as established by the enabling statute, if one

DEPARTMENT OF AGRICULTURE

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Deposit---pledged---securities---or---guarantee---agreements shall be kept in the custody of the Director. Only Certificates of Deposit issued by financial institutions that are members of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation will be accepted by the Department as collateral security. Letters of Credit shall be in accordance with Article V of the Uniform Commercial Code [810 ILCS 5/Art. VI. In-the-event-the-amount-of-the Certificate-of-Deposit-exceeds---the-maximum-amount---insured---by---the Federal---Deposit---Insurance-Corporation---or---the-Federal-Savings---and---Loan Insurance-Corporation---that-amount-exceeding-the-insured-portion-shall be-secured-with-government-treasury-notes-by-the-financial-institution that-issued---the---Certificate---of---Deposit- Notice of request for cancellation and return of the collateral Certificate-of-Deposit pledged---security---or---guarantee---agreement shall be sent by the licensee/registrant by certified mail to the Director, Illinois Department of Agriculture, P.O. Box 19281, Springfield, Illinois 62794-9281 62794-9281. The notice shall contain the name and address of the principal, the amount of the collateral Certificate-of-Deposit account---number---or---list---of---securities and reason for requesting the return of the collateral Certificate-of-Deposit---pledged---securities---or guarantee-agreement.

cd) In the event the amount of the collateral Certificate---of---Deposit pledged---security---or---guarantee---agreement is changed, the licensee/registrant shall submit a new collateral acceptable Certificate-of-Deposit---pledged---security---or---guarantee---agreement to the Department. The date the new collateral Certificate-of-Deposit pledged-security---or---guarantee---agreement is to be effective shall be set by the Department and any liability accruing under the prior collateral Certificate---of---Deposit---pledged---security---or---guarantee agreement will be transferred to the new collateral Certificate-of-Deposit---pledged---security---or---guarantee---agreement. The effective date of the new collateral Certificate---of---Deposit---pledged---security---or guarantee-agreement shall be set whereby there is no lapse of time that claimants are not protected by pledged security. The Department will release the original collateral Certificate---of---Deposit---or guarantee-agreement upon receipt of the new collateral Certificate---of-Deposit---or-guarantee-agreement---or---will---release---the-amount-of-pledged security-requested-to-be-returned-provided-all---statutory---obligations of-the-licensing/registration-act-have-been-met.

de) The financial institution shall pay directly to the purchaser that amount of interest that will enable the Certificate of Deposit to be withdrawn at full face value at any time. In the event the business fails, the Trustee shall liquidate the Certificate of Deposit and any interest accrued will be paid to the Trustee. When the Trustee liquidates the Certificate of Deposit, the financial institution will be notified in writing of such action by certified or registered mail or by personal demand by an authorized representative of the Department.



DEPARTMENT OF AGRICULTURE

NOTICE OF PROPOSED AMENDMENT(S)

prevails, or the Mechanics Lien Act [770 ILCS 60] "An Act relating to contractors and material-men, known as mechanics' liens" or 30 295 days from the date the business is closed, whichever is less. The closing date of a business shall be the date the Illinois Department of Agriculture commences any audit which results in the closing of the business or the date the business failed, whichever occurs first.

- b) All claims determined as being valid claims by the Illinois Department of Agriculture shall be considered as valid claims for the purposes of filing a claim against the collateral certificate of deposit guarantee agreement or other pledged security.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 3.110 Hearing to Verify Claimants and Claim Amounts

The Trustee shall give at least a 10-day notice by registered or certified mail to the licensee/registrant posting the collateral certificate of deposit guarantee agreement or other pledged security, as well as to all known claimants advising them of the date, time and place of an administrative hearing. A hearing to receive claims not previously submitted to the Trustee and to verify claimants and their amount shall be held by the Trustee in accordance with 8 Ill. Adm. Code 3.60. Notice of the date, time and place of the hearing shall be published in the official State newspaper and once in a newspaper in the business' licensed location. The administrative law judge hearing officer, in his/her findings, shall order that all, any portion or none of the collateral certificate of deposit guarantee agreement and/or pledged security be used by the Trustee for the payment of valid claims.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 3.120 Dispute of Claims by Licensee/Registrant

In the event that the licensee/registrant fails to object to any of the valid claims (8 Ill. Adm. Code 1.315), the Trustee shall distribute the trust funds in accordance with 8 Ill. Adm. Code 3.130. The final administrative decision (see 8 Ill. Adm. Code 1.77(f) 1-754 and 1.124 1-340) shall be subject to judicial review in accordance with the Article III Administrative Review Law 7 Code of Civil Procedure [735 ILCS 5/Art. III].

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 3.130 Release of Payment to Claimants

No portion of the collateral certificate of deposit guarantee agreement and/or pledged security shall be paid to claimants by the Director of the Illinois

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Department of Agriculture, as Trustee, until such time as 30 thirty-five (35) days have passed after a final administrative order without appeal or action on a rehearing before the administrative law judge hearing officer (8 Ill. Adm. Code 1.114 1-315). After a final administrative determination and payment to the claimants with valid claims is made, the Director of the Illinois Department of Agriculture shall return the net balance, if any, to the person pledging the collateral certificate of deposit guarantee agreement or securities.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 3.140 Return of Collateral Certificate of Deposit Guarantee Agreement and/or Pledged Security When There Is No Business Failure

If a business ceases operation or if a guarantor's ownership in the business ceases, the collateral certificate of deposit guarantee agreement and/or pledged securities shall be released to the licensee/registrant at the conclusion of the time period for filing claims (see 8 Ill. Adm. Code 3.100), provided an investigation by the Department of Agriculture reveals that no apparent statutory liability arose during the period of time the business was operating. Notification that the business has ceased and request for the release of the collateral certificate of deposit guarantee agreement and/or pledged securities shall be delivered in writing to the Department at its Springfield office by the licensee/registrant. Within the first two weeks of its investigation, the Department shall place at least 3 notices in a newspaper in the business' licensed location informing persons with claims to submit them.

(Source: Repealed at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART C: PROCEDURE FOR THE COLLECTION, CONTROL AND DISTRIBUTION OF GRAIN AND OTHER ASSETS RECEIVED BY THE DIRECTOR OF THE ILLINOIS DEPARTMENT OF AGRICULTURE ACTING AS TRUSTEE ON BEHALF OF THE CLAIMANTS

Section 3.180 Investigation and Audit by Trustee (Repealed)

When an audit reveals that the licensee/registrant is unable to meet the specific financial obligations as specified in the licensing/registration act, the Director of the Illinois Department of Agriculture as Trustee shall take possession of all of the licensee's or registrant's assets in the case of grain warehouses or grain dealers, this includes grain assets. Where the licensee/registrant does not voluntarily surrender his/her assets, the Trustee shall take whatever legal action as is necessary to secure such assets. The Trustee shall conduct an investigation and audit to accumulate claims and



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none of the assets held in trust be used by the trustee for the satisfaction of paying valid claims. In the event that the licensee/registrant fails to object to any of the valid claims (0-III-Adm-345) the Director of the Illinois Department of Agriculture as trustee shall disburse the assets in accordance with 0-III-Adm-Code 3-220. The final administrative decision (see 0-III-Adm-Code 1-75(k) and 1-340) shall be subject to judicial review in accordance with Article III, Administrative Review Code of Civil Procedure.

(Source: Repealed at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 3.220 Release of Assets to Claimants (Repealed)

No portion of the licensee's or registrant's assets shall be paid to claimants by the Director of the Illinois Department of Agriculture as trustee until such time as thirty-five (35) days has passed after a final administrative decision. When requested, the trustee will provide a breakdown on how the trust amount was distributed. After payment of valid claims is made, the Director of the Illinois Department of Agriculture shall return the net balance, if any, of the licensee's or registrant's assets which were held in trust to the person pledging the security.

(Source: Repealed at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 3.230 Disposition of Assets; Trust Accounts (Repealed)

a) If the failure is a grain warehouseman or a grain dealer, all grain assets shall be placed in trust by the Director of the Illinois Department of Agriculture. The Department shall convert the amount of grain assets and/or pledged securities as necessary to cover outstanding obligations to cash through the sale of such assets. Grain assets and/or pledged security not converted to cash shall be held in trust until outstanding obligations have been paid and then returned to the person pledging the security and/or grain assets in accordance with 8-III-Adm-Code 3-220. The Department shall establish and deposit funds received from liquidated assets into an interest-bearing trust account in a federally insured financial institution until payment to claimants is made. The funds in a trust account shall be paid to claimants with valid claims by check written by the Department. An accounting of funds which are deposited in the trust account shall be maintained by the Department of Agriculture on a separate accounting record for each trust account identifiable as to the source of such funds and any accrued interest shall be prorated among the identified funds in amounts equal to the same percentage as each identified fund is to the total trust account. Accrued interest from funds in a trust account shall be available for payment of valid claims in determining the type of account to

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documents as may be available to support claims against the assets of the licensee/registrant. During its investigation, the Department shall place at least 3 notices in a newspaper in the business licensed location informing persons with claims to submit them.

(Source: Repealed at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 3.190 Valid Claims (Repealed)

a) Claims to be valid against a licensee's or registrant's assets held by the trustee shall be defined as bona fide obligations covered by enabling statute and/or Section 40-23 of the Civil Administrative Code of Illinois which are filed by claimants or which are disclosed by the audit made by the Illinois Department of Agriculture. Any claim to be a valid claim against a licensee's or registrant's assets must be filed or disclosed by the Illinois Department of Agriculture in its audit within the Statute of Claims limitation as established by the enabling statute, if one prevails, or an Act relating to contractors and material liens known as mechanics' liens or 205 days from the date the business is closed. The closing date of a business shall be the date the Illinois Department of Agriculture commences any audit examination or inspection which results in the closing of the business or the date the business failed, whichever occurs first.

b) All claims determined as being valid claims by the Illinois Department of Agriculture shall be considered as valid claims for the purposes of filing a claim against the licensee's or registrant's assets.

(Source: Repealed at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 3.200 Hearing to Verify Claimants and Claim Amounts (Repealed)

The trustee shall give at least a 10-day notice by registered or certified mail to the licensee/registrant as well as to all known claimants, advising them of the date, time and place of the administrative hearing. A hearing to receive claims not previously submitted to the trustee and to verify claimants and their amounts shall be held by the trustee in accordance with 8-III-Adm-Code 3-60. Notice of the date, time and place of the hearing shall be published in the official State newspaper and at least once in a newspaper in the business licensed location.

(Source: Repealed at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 3.210 Dispute of Claims by Licensee/Registrant (Repealed)

The hearing officer, in his/her findings, shall order that all or any portion of

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deposit-trust-funds, the Department shall consider interest rates, the anticipated period of time before payment to claimants with valid claims will be made, maturity dates and any other factors which could affect the maximization of funds for the benefit of claimants. Assets held in trust and covered by the Civil Administrative Code of Illinois shall be used for the benefit of claimants as designated in those Acts listed in the Authority Note and with respect to other assets not specifically designated to a particular type of claim. Priority of claims and equal prorate distribution of assets shall be as set forth in Section 40-23 of the Civil Administrative Code of Illinois.

b) In the event of a failure of any licensee or registrant other than a grain warehouseman or grain dealer and/or valid claims have been presented to the Department, the Illinois Department of Agriculture shall liquidate the assets. The Department shall establish and deposit funds received from liquidated assets into an interest-bearing trust account in a federally insured financial institution until payment to claimants is made. The funds in a trust account shall be paid to claimants with valid claims by check written by the Department. An accounting of the funds which are deposited in the trust account shall be maintained by the Department of Agriculture on a separate accounting record for each trust account identifiable as to the source of such funds and any accrued interest shall be prorated among the identified funds in amounts equal to the same percentage as each identified fund is to the total trust account. Accrued interest from funds in a trust account shall be available for payment of valid claims in determining the type of account to deposit trust funds. The Department shall consider interest rates, the anticipated period of time before payment to claimants with valid claims will be made, maturity dates and any other factors which could affect the maximization of funds for the benefit of claimants.

c) Reports shall be made by the Department to the Comptroller of funds held in such accounts in accordance with the "State Comptroller Act".

(Source: Repealed at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Illinois State Fair and DuQuoin State Fair, Non-Fair Space Rental and the General Operation of the State Fairgrounds
- 2) Code Citation: 8 Ill. Adm. Code 270
- 3) Section Numbers: Proposed Action:  
270.350 Amendment
- 4) Statutory Authority: State Fair Act [20 ILCS 210]; Sections 16 and 40.14 of the Civil Administrative Code of Illinois [20 ILCS 5/16 and 40.14].
- 5) A Complete Description of the Subjects and Issues Involved: Pets will not be allowed in public areas of the fairgrounds during the Illinois State Fair in Springfield and the DuQuoin State Fair in DuQuoin with exceptions as noted in the proposed amendment to Section 270.350. Violation of the rule will be cause for the termination of any contract or privilege and for removal of the pet(s) and owner(s) from the fairgrounds.
- 6) Will this proposed rule replace an emergency rule in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed amendment contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: Rule does not affect units of local governments.
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: A 45-day written comment period will begin on the day this notice of rulemaking appears in the Illinois Register. Please mail written comments on the proposed rulemaking to the attention of:  
  
Debbie Wakefield  
Department of Agriculture  
State Fairgrounds, P.O. Box 19281  
Springfield IL 62794-9281  
217/785-5713  
Facsimile: 217/785-4505
- 12) Initial Regulatory Flexibility Analysis:
  - A) Types of small businesses, small municipalities, and not-for-profit corporations affected: State Fair exhibitors, concessionaires, fairgoers, and lessees
  - B) Reporting, bookkeeping or other procedures required for compliance:

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None

C) Types of professional skills necessary for compliance: None

13) Regulatory agenda on which this rulemaking was summarized: January 1998

The full text of the Proposed Amendments begins on the next page:

DEPARTMENT OF AGRICULTURE  
NOTICE OF PROPOSED AMENDMENT

TITLE 8: AGRICULTURE AND ANIMALS  
CHAPTER I: DEPARTMENT OF AGRICULTURE  
SUBCHAPTER j: FAIRS

PART 270

ILLINOIS STATE FAIR, AND DUQUOIN STATE FAIR,  
NON-FAIR SPACE RENTAL AND THE GENERAL  
OPERATION OF THE STATE FAIRGROUNDS

SUBPART A: DEFINITIONS: POLICY: VIOLATION

Section  
270.10  
270.15  
270.20

Definitions  
Policy  
Violation of Rules; Administrative Hearings

SUBPART B: CONCESSIONS AND EXHIBITS AT THE STATE FAIR

Section  
270.25  
270.30  
270.35  
270.40  
270.45  
270.50  
270.55  
270.60

Categories of Exhibits  
Privilege to Operate a Concession or Exhibit  
Application for Reassignment of Space  
New Applications for Space Rental  
Substitute Locations or Discontinuance of Contracts  
Reassignment of Space by Department  
Number of Stands Permitted  
Policy Governing Exhibits/Concessions and Approval to Conduct  
Business

270.65  
270.70  
270.75  
270.80  
270.85  
270.90  
270.95  
270.100  
270.105  
270.110  
270.115  
270.120  
270.125  
270.130  
270.135  
270.140  
270.145  
270.150  
270.155  
270.160

Policy of Permitting Space Without Monetary Charge  
Exercising Constitutional Freedoms  
Assignment of Contracts  
Inspection of Premises  
Removal or Denial of Acceptance  
Concessions and Exhibits Prohibited  
Liquified Petroleum Gas  
Merchandising Permits  
Measuring Space  
Electricity  
Broadcasting Devices  
Display of Exhibit or Concession Number  
Protection of the Public and Lessee's Property  
Distributing Literature or Display Advertising  
Payment of Space Rental Contract  
Operational Hours  
Sales Prior to the State Fair  
Sales During the State Fair  
Property Shipped to the State Fair  
Removal of Property



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270.165 Gambling, Raffles, Prizes, Games of Chance, Intoxicating Beverages  
 270.170 Inside Exhibits  
 270.175 Posting Food Prices  
 270.180 Clean-Up  
 270.185 Public Health  
 270.190 Food and/or Drink Service Operations  
 270.195 Release Procedure  
 270.200 Security  
 270.205 Liability  
 270.210 Concessionaire's or Exhibitor's Trailers  
 270.215 Failure to Abide by Rules or Contract Provisions  
 270.220 Lessee's General Standard of Conduct  
 270.221 Emergency Closing

## SUBPART C: HORSE RACING AT THE STATE FAIR

## Section

270.225 Categories of Horse Racing  
 270.230 State Fair Colt Stakes Races  
 270.235 Review Futurity Races  
 270.240 Illinois Trotting and Pacing Colt Races  
 270.245 Quarter Horse Races

## SUBPART D: PREMIUMS AND RULES GOVERNING EXHIBITS OR EVENTS

## Section

270.250 Premiums Offered  
 270.255 Premium Books  
 270.260 Payment of Premiums  
 270.261 Land of Lincoln Breeders Awards for Purebred or Registered Livestock

## SUBPART E: JUDGES: STATE FAIR

## Section

270.265 Professional and Artistic Contracts  
 270.270 Judge's Salary  
 270.275 Selection of Judges

## SUBPART F: CERTIFICATES OF AWARD: STATE FAIR

## Section

270.280 Certificates, Ribbons and Trophies

## SUBPART G: FEES FOR ADMISSION TO THE STATE FAIR

## Section

270.285 Daily Admission Charge  
 270.290 Special Events

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270.295 Designated Days  
 270.300 Gate Admission Charge Waived  
 270.305 Schedule of Admission Charges and Fees  
 270.310 Admission of Motor Vehicles  
 270.315 Employees of Exhibitor/Concessionaire

## SUBPART H: TRAFFIC CONTROL, PARKING AND CAMPING: STATE FAIR

## Section

270.320 Camping Location  
 270.325 Fee for Camping  
 270.330 Camping Sticker  
 270.335 Removal of Illegally Parked Vehicles  
 270.340 Extension Cords  
 270.345 Traffic Control and Parking; Spraying Livestock Trucks

## SUBPART I: MISCELLANEOUS RULES GOVERNING THE OPERATION OF THE STATE FAIR

## Section

270.350 Pets  
 270.355 Structures of Lessee  
 270.360 Restrictions  
 270.365 Intoxicating Beverages  
 270.370 Grandstand Ticket Refunds  
 270.371 Leasing Facilities During the State Fair

SUBPART J: NON-FAIR SPACE RENTAL:  
BASIC RULES APPLICABLE TO ALL RENTALS

## Section

270.375 Non-Fair Availability Dates  
 270.380 Application for Space  
 270.385 Reassignment  
 270.390 Compliance with State Law and Regulations  
 270.395 Removal Rights or Denial of Acceptance  
 270.400 Assigned Space  
 270.405 Inspection  
 270.410 Payment  
 270.415 Tickets  
 270.420 Facility Availability  
 270.425 Parking  
 270.430 Security  
 270.435 Fire Regulations  
 270.440 Tables and Chairs  
 270.445 Clean-Up  
 270.450 Alterations  
 270.455 Insurance

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270.460 Discrimination  
270.465 Camping  
270.470 Concessions  
270.475 Delinquency  
270.480 Gambling, Raffles, Prizes, Games of Chance, Intoxicating Beverages  
270.485 Non-Exclusivity (Repealed)  
270.490 Lessee's General Standard of Conduct  
270.495 Criteria for Grant of Privileges  
270.500 Waiver of Applicable Rules (Repealed)  
270.505 Rate Schedules  
270.510 Limit on Duration of Contract  
270.515 Liquified Petroleum Gas

SUBPART K: NON-FAIR CONCESSIONS

Section  
270.520 Renter Rights (Repealed)  
270.525 Contract  
270.530 Interests of the Public  
270.535 Liability  
270.540 Health Laws  
270.545 Rates  
270.550 Inspection  
270.555 Payment Due

SUBPART L: CAMPING: NON-FAIR

Section  
270.560 Who May Camp  
270.565 Location  
270.570 Fee  
270.575 Camping Facilities  
270.580 Sticker  
270.585 Penalty  
270.590 Extension Cords

SUBPART M: HOUSE TRAILERS: NON-FAIR

Section  
270.595 Eligibility  
270.600 Misconduct  
270.605 Liability  
270.610 Rent and Rates For Other Services  
270.615 Payment Method

SUBPART N: HORSE OR CATTLE BARN, STALL AND  
TACK ROOM RENTAL: NON-FAIR

DEPARTMENT OF AGRICULTURE  
NOTICE OF PROPOSED AMENDMENT

Section  
270.620 Rates  
270.625 Rent Payable  
270.630 General Stabling Rules: (Non-Contractual Events)  
270.635 Reporting  
270.640 Lessee Collection of Fees  
270.645 Stall Use  
270.650 Restriction to Assigned Space  
270.655 Trailer Storage  
270.660 Inspection  
270.665 Restrictions  
270.670 Quarantine Provisions  
270.675 Dogs  
270.680 General Misconduct  
270.685 Track Usage  
270.690 Restrictions on Barn Use

AUTHORITY: Implementing and authorized by the State Fair Act [20 ILCS 2101; implementing Section 40.14 and authorized by Section 16 of the Civil Administrative Code of Illinois [20 ILCS 5/16 and 40.14].

SOURCE: Adopted at 4 Ill. Reg. 25, P. 34, effective June 11, 1980; amended at 5 Ill. Reg. 1332, effective January 29, 1981; codified at 5 Ill. Reg. 10532; amended at 6 Ill. Reg. 8958, effective July 9, 1982; amended at 8 Ill. Reg. 6103, effective April 25, 1984; emergency amendments at 10 Ill. Reg. 13370, effective July 28, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 14282, effective August 20, 1986; amended at 10 Ill. Reg. 20468, effective November 26, 1986; amended at 11 Ill. Reg. 2228, effective January 20, 1987; amended at 15 Ill. Reg. 455, effective January 2, 1991; amended at 18 Ill. Reg. 9400, effective June 12, 1994; amended at 19 Ill. Reg. 9400, effective June 29, 1995; amended at 21 Ill. Reg. 5530, effective April 22, 1997; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART I: MISCELLANEOUS RULES GOVERNING THE OPERATION  
OF THE STATE FAIR

Section 270.350 Pets

Pets are not allowed to be in public areas of the fairgrounds during the State Fair. Pets used for assistance to disabled persons, authorized competitive exhibits, shows or demonstrations at the State Fair or other approved purposes will be allowed. Pets must be kept on a leash or confined at all times while on the fairgrounds during the State Fair. Dogs on a leash must be tied in such a manner to allow safe clearance for passersby in all center aisles or in barns. Violation of this Section rule will be cause for termination of any contract or privilege and for removal of the pets pet and owners owner from the Fairgrounds.

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(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- 1) Heading of the Part: Standard Procurement
- 2) Code Citation: 44 Ill. Adm. Code 1300
- 3) Section Numbers:
- | <u>Section Numbers:</u> | <u>Proposed Actions:</u> |
|-------------------------|--------------------------|
| 1300.01                 | New                      |
| 1300.05                 | New                      |
| 1300.08                 | New                      |
| 1300.10                 | New                      |
| 1300.15                 | New                      |
| 1300.25                 | New                      |
| 1300.30                 | New                      |
| 1300.525                | New                      |
| 1300.1002               | New                      |
| 1300.1010               | New                      |
| 1300.1510               | New                      |
| 1300.1560               | New                      |
| 1300.1570               | New                      |
| 1300.1580               | New                      |
| 1300.2005               | New                      |
| 1300.2010               | New                      |
| 1300.2012               | New                      |
| 1300.2015               | New                      |
| 1300.2020               | New                      |
| 1300.2025               | New                      |
| 1300.2030               | New                      |
| 1300.2035               | New                      |
| 1300.2036               | New                      |
| 1300.2037               | New                      |
| 1300.2038               | New                      |
| 1300.2040               | New                      |
| 1300.2043               | New                      |
| 1300.2044               | New                      |
| 1300.2045               | New                      |
| 1300.2046               | New                      |
| 1300.2047               | New                      |
| 1300.2050               | New                      |
| 1300.2055               | New                      |
| 1300.2060               | New                      |
| 1300.2560               | New                      |
| 1300.2800               | New                      |
| 1300.4005               | New                      |
| 1300.4010               | New                      |
| 1300.4505               | New                      |
| 1300.4510               | New                      |
| 1300.4530               | New                      |
| 1300.4535               | New                      |
| 1300.4540               | New                      |



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1300.4545 New  
 1300.5013 New  
 1300.5015 New  
 1300.5020 New  
 1300.5030 New  
 1300.5035 New  
 1300.5310 New  
 1300.5510 New  
 1300.5520 New  
 1300.5530 New  
 1300.5540 New  
 1300.5550 New  
 1300.6010 New  
 1300.6500 New  
 1300.6510 New  
 1300.6520 New  
 1300.7000 New  
 1300.7010 New  
 1300.7015 New  
 1300.7020 New  
 1300.7025 New  
 1300.7030 New

4) Statutory Authority: Public Act 90-572, Section 1-30, effective July 1, 1998 [30 ILCS 25/1-30]

5) Complete Description of the Subjects and Issues Involved: Section 1-30 of the Illinois Procurement Code requires that constitutional officers procure their needs in a manner substantially in accordance with the requirements of the Code, and that such officers promulgate rules no less restrictive than the requirements of the Code to govern procurements.

This rulemaking prescribes standard procurement rules for the Office of the Attorney General in accordance with the requirements of the Illinois Procurement Code.

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed rule contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: This rule neither creates nor modifies a State mandate within the meaning of Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

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## NOTICE OF PROPOSED RULES

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Shawn W. Denney  
 Counsel to the Attorney General  
 Office of the Attorney General  
 500 South Second Street  
 Springfield IL 62706  
 (217) 782-6006

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Small businesses and not-for-profit corporations that will be affected are those that seek to provide goods and services, including equipment, supplies and professional and artistic services, to the Office of the Attorney General.

B) Reporting, bookkeeping or other procedures required for compliance: Each contractor and subcontractor is required to maintain books and records relating to performance of the contract or subcontract and necessary to support amounts charged to the State for a period of 3 years from the later of the date of final payment under the contract or subcontract or completion of the contract or subcontract.

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: This Rule was not included on either of the two most recent regulation agendas because: Public Act 90-572, which authorizes the rulemaking, was signed into law on February 6, 1998, after such regulatory agendas were published.

The full text of the Proposed Rule begins on the next page:

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## NOTICE OF PROPOSED RULES

## TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENTS AND PROPERTY MANAGEMENT

## SUBTITLE B: SUPPLEMENTAL PROCUREMENT RULES

## CHAPTER XX: ATTORNEY GENERAL

## PART 1300

## STANDARD PROCUREMENT

## SUBPART A: GENERAL

Section	Title
1300.01	Title
1300.05	Policy
1300.08	Illinois Procurement Code
1300.10	Application
1300.15	Definitions of Terms Used in This Part
1300.25	Property Rights
1300.30	Contracts Necessary to Prepare for Anticipated Litigation

## SUBPART B: PROCUREMENT RULES

Section	Rules
1300.525	

## SUBPART C: PROCUREMENT AUTHORITY

Section	Conduct of Procurements
1300.1002	
1300.1010	Construction

## SUBPART D: PUBLICIZING PROCUREMENT ACTIONS

Section	Publicizing Procurement Actions
1300.1510	
1300.1560	Supplemental Notice
1300.1570	Error in Notice
1300.1580	Direct Solicitation

## SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION - GENERAL

Section	General Provisions
1300.2005	
1300.2010	Competitive Sealed Bidding
1300.2012	Multi-Step Sealed Bidding
1300.2015	Competitive Sealed Proposals
1300.2020	Small Purchases
1300.2025	Sole Source Procurement
1300.2030	Emergency Procurements

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1300.2035	Competitive Selection Procedures
1300.2036	Other Methods of Source Selection
1300.2037	Tie Bids and Proposals
1300.2038	Mistakes
1300.2040	Cancellation of Solicitations; Rejection of Bids or Proposals

## SUBPART F: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

Section	
1300.2043	Suppliers
1300.2044	Vendor List/Required Use
1300.2045	Prequalification
1300.2046	Responsibility

## SUBPART G: BID, PROPOSAL AND PERFORMANCE SECURITY

Section	Security Requirements
1300.2047	

## SUBPART H: SPECIFICATIONS AND SAMPLES

Section	Specifications and Samples
1300.2050	

## SUBPART I: CONTRACT TYPE

Section	Types of Contracts
1300.2055	

## SUBPART J: DURATION OF CONTRACTS

Section	Duration of Contracts - General
1300.2060	

## SUBPART K: CONTRACT MATTERS

Section	Prevailing Wage
1300.2560	

## SUBPART L: CONTRACT PRICING

Section	All Costs Included
1300.2800	

## SUBPART N: REAL PROPERTY LEASES AND CAPITAL IMPROVEMENT LEASES

Section	Real Property Leases and Capital Improvement Leases
1300.4005	

## ATTORNEY GENERAL

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## 1300.4010 Renewal

## SUBPART O: PREFERENCES

## Section

1300.4505 Procurement Preferences  
 1300.4510 Resident Bidder Preference  
 1300.4530 Correctional Industries  
 1300.4535 Sheltered Workshops for the Disabled  
 1300.4540 Gas Mileage  
 1300.4545 Small Business

## SUBPART P: ETHICS

## Section

1300.5013 Conflicts of Interest  
 1300.5015 Negotiations for Future Employment  
 1300.5020 Exemptions  
 1300.5030 Revolving Door  
 1300.5035 Disclosure of Financial Interests and Potential Conflicts of Interest

## SUBPART Q: CONCESSIONS

## Section

1300.5310 Concessions

## SUBPART R: COMPLAINTS, PROTESTS AND REMEDIES

## Section

1300.5510 Complaints Against Vendors  
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## SUBPART S: SUPPLY MANAGEMENT AND DISPOSITIONS

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1300.6010 Supply Management and Dispositions

## SUBPART T: GOVERNMENTAL JOINT PURCHASING

## Section

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## SUBPART U: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

## Section

1300.7000 Severability  
 1300.7010 Government Furnished Property  
 1300.7015 Inspections  
 1300.7020 Records and Audits  
 1300.7025 Written Determinations  
 1300.7030 No Waiver of Sovereign Immunity

AUTHORITY: Implementing and authorized by Section 1-30 of the Illinois Procurement Code [30 ILCS 525/1-30].

SOURCE: Adopted at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL

## Section 1300.01 Title

This Part may be cited as the Attorney General's Procurement Rules.

## Section 1300.05 Policy

All procurements for the Office of the Attorney General (OAG) shall be accomplished in the most economical, expeditious and commercially reasonable manner that is in accordance with law, this Part and other applicable rules.

## Section 1300.08 Illinois Procurement Code

Articles 1, 15, 20, 25, 35, 40, 45, 50 and 53 of the Illinois Procurement Code [30 ILCS 525/Arts. 1, 15, 20, 25, 35, 40, 45, 50 and 53] (the Code) will be referenced herein as though applicable to the OAG, and needs shall be procured in a manner substantially in accordance with those provisions of the Code, except to the extent otherwise provided in this Part. For purposes of this Part, any reference in the Code or this Part to the Chief Procurement Officer (CPO) means the Attorney General or his designee. The Attorney General may appoint one or more State Purchasing Officers (SPO).

## Section 1300.10 Application

- a) The Code and this Part apply to those procurements for which the contractors were first solicited on or after July 1, 1998.
- b) Procurements for which contractors were first solicited on or before June 30, 1998, shall be conducted pursuant to legal requirements in effect at the time of the solicitation. The terms and conditions and the rights and obligations under contracts resulting from such procurements shall not be impaired.



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- c) A solicitation occurs on or before June 30, 1998, for purposes of this Part, in the following circumstances:
- 1) When advertising is required in the Official State Newspaper, the first advertisement must run no later than June 30, 1998.
  - 2) When advertising is not required:
    - A) but if the procurement was advertised, the first advertisement must have run no later than June 30, 1998;
    - B) if the procurement was by direct solicitation by mail, the solicitation must have been postmarked no later than June 30, 1998;
    - C) if the procurement was by direct solicitation by fax, the fax must show a transmission date no later than June 30, 1998;
    - D) if the procurement was solicited in-person or by telephone, the solicitation must have occurred no later than June 30, 1998, and the individual who made the solicitation must state in writing when the procurement was discussed, and must name the party with whom the discussion took place.
  - 3) In all circumstances, the solicitations must be for the procurement of particular needs. A general discussion to determine if there is any interest is not considered a solicitation.

## Section 1300.15 Definitions of Terms Used in This Part

As used throughout this Part, terms defined in the Illinois Procurement Code shall have the same meaning as in the Code and as further defined below, and each term listed in this Section shall have the meaning set forth below unless its use clearly requires a different meaning. Terms may be defined in particular Sections for use in that Section.

"Bid" - The response to an Invitation for Bids.

"Bidder" - Any person who submits a bid.

"Brand Name or Equal Specification" - A specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet State requirements, and which allows the submission of equivalent products.

"Brand Name Specification" - A specification limited to one or more items by manufacturers' names or catalogue numbers.

"Contract" - A contract may be in written or oral form. The term contract as used in the Code and this Part does not include: goods or services the terms governing which are established by tariff of the Illinois Commerce Commission or the Federal Communications Commission,

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bonds issued by or on behalf of any State agency, or contracts, other than for "concessions", where the State agency signs, but has no financial obligation to the other parties.

"Day" - Calendar day. In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a State holiday, in which event the period shall run to the end of the next business day.

"DCMS" or "CMS" - The Department of Central Management Services.

"OAG" - The Office of the Attorney General

"Proposal" - the response to a Request for Proposals.

"Purchase of Care" - Purchase of care means a contract with a person for the furnishing of medical, educational, psychiatric, vocational, rehabilitative, social, or human services directly to a recipient of a State aid program. [30 ILCS 525/1-15.68] Services provided to a recipient include those that are a necessary adjunct to the provision of the State aid program services (e.g., obtaining intake information prior to commencement of medical treatment). Services provided to an applicant for a State aid program necessary to determine eligibility for the program are included within this definition.

"Qualified Products List" - An approved list of supplies, services, or construction items described by model or catalogue numbers, which, prior to competitive solicitation, the State has determined will meet the applicable specification requirements.

"Specification" - Any description of the physical, functional, or performance characteristics, or of the nature of supply, service, or construction items. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably throughout this Part.

"Specification for a Common or General Use Item" - A specification that has been developed and approved for repeated use in procurements in accordance with the provisions of Section 1300.2050.

## Section 1300.25 Property Rights

Receipt of an Invitation for Bids or other procurement document, or submission of any response thereto or other offer, confers no right to receive an award or contract, nor does it obligate the State in any manner.

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**Section 1300.30 Contracts Necessary to Prepare for Anticipated Litigation**

Contracts necessary to prepare for anticipated litigation, enforcement actions or investigations, including but not limited to the appointment of special assistant attorneys general, contracts for court reporter services, and contracts with expert witnesses, are excepted from the application of the Code and this Part, provided that they are approved by Counsel to the Attorney General, or his designee, as provided in Section 1-10(7) of the Code.

## SUBPART B: PROCUREMENT RULES

**Section 1300.525 Rules**

To the extent practicable, the OAG may avail itself of master, schedule or open-ended contracts established by DCMS; items available from the Paper and Printing Warehouse; and DCMS contracts for telecommunications equipment, software and services, paper and envelopes, and vehicles and vehicle services. The CPO or SPO may submit purchase requests to DCMS in accordance with rules promulgated by DCMS.

## SUBPART C: PROCUREMENT AUTHORITY

**Section 1300.1002 Conduct of Procurements**

The Attorney General or his designee shall serve as CPO for purposes of the Code, and may conduct any or all procurements for the OAG. The CPO may appoint one or more SPOs to conduct procurements on behalf of the CPO in accordance with conditions specified in the terms of the appointment.

**Section 1300.1010 Construction**

Any construction or construction related professional and artistic services in excess of \$30,000 necessary for the OAG will be procured by the CPO of the Capital Development Board. Any request for such services will be submitted to the CPO-CDB in accordance with CDB rules. In the event of an emergency, the CPO may arrange for such construction as is necessary to protect the property and records of the OAG pending the making of arrangements with the CDB.

## SUBPART D: PUBLICIZING PROCUREMENT ACTIONS

**Section 1300.1510 Publicizing Procurement Actions**

Notice of any procurement action required by the Code to be publicized in the Illinois Procurement Bulletin will be forwarded to DCMS for inclusion in the appropriate volume of the Bulletin in accordance with rules promulgated by DCMS.

**Section 1300.1560 Supplemental Notice**

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The OAG may place ads in the Official State Newspaper selected by DCMS or other publications to supplement notice in the Bulletin.

**Section 1300.1570 Error in Notice**

When a required publication contains an error, the error may be corrected by a single notice published in the Bulletin.

**Section 1300.1580 Direct Solicitation**

In addition to giving notice in the Bulletin, the OAG may directly contact prospective vendors. Direct solicitation may be oral or in writing, but care will be taken to ensure that all vendors solicited in this manner receive the same information. When making direct solicitations, at least three vendors will be contacted.

## SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION - GENERAL

**Section 1300.2005 General Provisions****a) Late Bids or Proposals, Late Withdrawals and Late Modifications**

1) Definition. Any bid or proposal received after the time, date and place set for receipt is late. Any withdrawal or modification of a bid or proposal received after the time and date set for opening of bids or proposals at the place designated for opening is late.

2) Treatment. No late bid or proposal, late modification, or late withdrawal will be considered unless it is received before contract award, and the bid, proposal, modification, or withdrawal would have been timely but for the action or inaction of OAG personnel directly serving the procurement activity.

3) Records. Records shall be made and kept for each late bid or proposal, late modification, or late withdrawal.

4) Any other submission that has a time or date deadline shall be treated in the same manner as a late bid.

**b) Extension of Time**

1) The date or time for submitting a bid or proposal or modifying or withdrawing a bid or proposal may be extended by the CPO or SPO prior to such date or time for the convenience of the OAG. Reasons for extension include but are not limited to allowing additional time for submissions to account for inclement weather, labor strikes, accidents and other such reasons.

2) After opening bids or proposals, the CPO or SPO may request bidders or offerors to extend the time during which the OAG may accept bids or proposals, provided that, with regard to bids, no other change is permitted. The reasons for requesting such extension shall be documented.

**c) Electronic and Facsimile Submissions**

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- 1) The Invitation for Bids or Request for Proposals may state that electronic and facsimile machine submissions will be considered if they are received at the designated office by the time and date set for receipt. Any required attachments will be submitted as stated in the Invitation for Bids or Request for Proposals.
- 2) Electronic submissions will be opened in accordance with electronic security measures in effect at the time of opening. Unless the electronic submission procedures provide for a secure receipt, vendor assumes risk of premature disclosure due to submission in unsealed form.
- 3) Fax submissions will be placed in a sealed container upon receipt and opened as other submissions. Vendor assumes risk of premature disclosure due to submission in unsealed form.

## d) Intent to Submit

The Invitation for Bids or the Request for Proposals may require that vendors submit, by a certain time and date, a notice of their intent to submit a bid or proposal in response to the Invitation for Bids or Request for Proposals. Bids and proposals submitted without complying with the notice of intent requirement shall be rejected.

## e) Only One Bid or Proposal Received

If only one responsive bid is received, or if only one proposal is received, an award may be made to the single bidder or offeror if the CPO or SPO finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise:

- 1) new bids or offers may be solicited;
- 2) the procurement may be cancelled; or
- 3) if the CPO or SPO determines in writing that the need for the supply or service continues, but that the price of the one bid is not fair and reasonable and there is no time for resolicitation or resolicitation would likely be futile, the procurement may then be conducted with any vendor under Section 1300.2025 (Sole Source Procurement) or Section 1300.2030 (Emergency Procurements), as appropriate. The CPO or SPO shall also attempt to negotiate the price offered by the single bidder to an acceptable level.

## f) Alternate or Multiple Bids or Proposals

1) Alternate bids or proposals may be accepted if:

- A) permitted by the solicitation and in accordance with instructions in the solicitation;
- B) only one vendor responded, in which case the alternate submission(s) may be evaluated and treated in accordance with Section 1300.2025 (Sole Source Procurement) of this Part;
- C) the low bidder, who has met all requirements of the solicitation, has provided a lower cost alternative that meets all of the material requirements of the specifications; or

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- D) a vendor clearly indicates a base submission, then that base submission shall be considered for award as though it were the only bid or proposal submitted by the vendor.
- 2) Multiple bids or proposals may be accepted if:
  - A) permitted by the solicitation and in accordance with instructions in the solicitation; or
  - B) only one vendor responded, then one or more of the submissions may be evaluated, provided that in the case of bids, only the lowest cost bid meeting specifications may be considered.

## g) Multiple Items

An Invitation for Bids or Request for Proposals may call for pricing of multiple items of similar or related type with award based on individual line item, group total of certain items, or grand total of all items.

## h) "All or None" Bids or Proposals

"All or none" bids or proposals may be accepted if the evaluation shows an "all or none" award to be in the State's best interest.

## i) Conditioning Bids or Proposals Upon Other Awards

Any bid or proposal that is conditioned upon receiving award of the particular contract being solicited and one or more other State contracts shall:

- 1) be rejected unless the vendor removes the condition; or
- 2) be evaluated and award made to that vendor if the vendor is also independently evaluated as the winner of the other Invitation for Bids or Request for Proposals provided the agency need not delay procurement actions to accommodate the vendor's "all or none" condition.

## j) Unsolicited Offers

- 1) Defined. An unsolicited offer is any offer other than one submitted in response to a solicitation.
- 2) Processing of Unsolicited Offers. The CPO or SPO may consider unsolicited offers and shall have final authority with respect to evaluation, acceptance and rejection of such unsolicited offers.
- 3) Conditions for Consideration. An unsolicited offer must be in writing and must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the OAG.
- 4) Evaluation. The unsolicited offer may be evaluated to determine its utility to the State and whether it would be to the State's advantage to enter into a contract based on such offer. An unsolicited offer which meets the requirements set forth above may be considered for award if the procurement also meets the requirements of Section 1300.2025 (Sole Source Procurement) or Section 1300.2020 (Small Purchases), in which case those procedures shall be followed as applicable.
- 5) Confidentiality. Any request for confidentiality of data contained in an unsolicited offer must be made in writing. If an award is made, confidentiality of data shall be agreed upon by



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the parties and governed by the provisions of the contract. If agreement cannot be reached on confidentiality, the OAG shall reject the unsolicited offer.

## k) Clarification of Bids and Proposals

The CPO or SPO may request that a vendor clarify its bid or proposal as a part of the evaluation process. A vendor shall not be allowed to change its bid or proposal in response to a request for clarification.

## 1) Extension of Time on Indefinite Quantity Contracts

The time of performance of an indefinite quantity contract may be extended upon agreement of the parties, provided the extension is for 90 days or less and the CPO or the SPO determines in writing that it is not practical to award another contract at the time of such extension.

## m) Increase in Quantity on Definite Quantity Contracts

The quantity that may be ordered from a definite quantity contract may be increased by up to 20% provided the CPO or SPO determines that separate bidding for the additional quantity is not likely to achieve lower pricing. The quantity may be increased by any percentage provided the dollar value of the increase does not exceed the small purchase threshold applicable to the type of good or service.

## n) Novation or Change of Name

1) Assignment. No OAG contract is transferable, or otherwise assignable, without the written consent of the CPO or the SPO provided, however, that a vendor may assign monies receivable under a contract after due notice to the OAG. Assignment may require the execution of a contract with the assignee and in such cases the assignee must meet all requirements for contracting with the OAG.

2) Recognition of a Successor in Interest; Novation. When in the best interest of the State, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:

- A) the transferee assumes all of the transferor's obligations;
  - B) the transferee meets all requirements for contracting with the OAG;
  - C) the transferor waives all rights under the contract as against the OAG; and
  - D) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required by the OAG, furnish a satisfactory performance bond.
- 3) Change of Name. When a vendor requests to change the name in which it holds a contract with the OAG, the CPO or SPO responsible for the contract shall, upon receipt of a document indicating such change of name, enter into an agreement with the requesting vendor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.
- 4) Reports. All change of name or novation agreements effected

under this subsection (n) other than by the CPO shall be reported to the CPO within 30 days after the date that the agreement becomes effective.

- o) Contracting for Installment Purchase Payments, Including Interest Contracts may provide for installment purchase payments, including interest charges, over a period of time. The interest rate may not exceed that established by law, including 30 ILCS 305.

## Section 1300.2010 Competitive Sealed Bidding

## a) Application

Competitive sealed bidding is the required method of source selection except as allowed by the Code and this Part. The provisions of this Section apply to every procurement required to be conducted by competitive sealed bidding.

## b) The Invitation for Bids

1) Use. The Invitation for Bids is used to initiate a competitive sealed bid procurement.

2) Content. The Invitation for Bids shall include, at a minimum, the following:

- A) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the State, and any other special information;
- B) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description; and
- C) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

3) Incorporation by Reference. The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where such documents can be obtained.

## c) Bidding Time

Bidding time is the period of time between the date of notice or distribution of the Invitation for Bids and the time and date set for receipt of bids. In each case, bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of 14 days shall be provided unless a shorter time is allowed in this Part.

## d) Bidder Submissions

1) Bid Form. The Invitation for Bids may provide a form that shall include space in which the bid price shall be inserted and that the bidder shall sign and submit along with all other necessary submissions.

2) Bid Samples and Descriptive Literature

- A) Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the

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items bid.

- B) Unsolicited bid samples or descriptive literature are submitted at the bidder's risk, may not be examined or tested, will not be deemed to vary any of the provisions of the Invitation for Bids, and may not be utilized by the vendor to contest a decision or understanding with the State.

e) Public Notice

- 1) Publication. Every procurement for goods and services in excess of \$10,000 that must be procured using an Invitation for Bids shall be published in the Illinois Procurement Bulletin.
- 2) Publication in the Bulletin may be supplemented by publication elsewhere at the discretion of the SPO. Examples include publication in:
  - A) the Official State Newspaper;
  - B) a newspaper of general circulation;
  - C) a newspaper of local circulation in the area pertinent to the procurement; or
  - D) industry media.

3) Public Availability. A copy of the Invitation for Bids shall be made available for public inspection.

- 4) Distribution. Invitations for Bids or Notices of the Availability of Invitations for Bids may be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition. Notices of Availability shall indicate where Invitations for Bids may be obtained; generally describe the supply or service desired; and indicate the due date for bids; and may contain other appropriate information. Where appropriate, the CPO or SPO may require payment of a fee or a deposit for the supplying of the Invitation for Bids.

f) Pre-Bid Conferences

Pre-bid conferences may be conducted to enhance understanding of the procurement requirements. They shall be announced to all prospective bidders known to have received an Invitation for Bids. The conference may be designated as attendance mandatory or attendance optional. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparation of bids. Only the written minutes of the conference shall be binding. Nothing stated in the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment to the Invitation for Bids. Minutes of the conference shall be supplied to all those prospective bidders known to have received an Invitation for Bids. If the conference is mandatory, the minutes shall be supplied to attendees only.

g) Amendments to Invitations for Bids

- 1) Form. Amendments to Invitations for Bids shall be identified as such and shall require that the bidder acknowledge receipt of all

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amendments issued. The amendment shall reference the portions of the Invitation for Bids it amends.

- 2) Distribution. Amendments shall be sent to all prospective bidders known to have received an Invitation for Bids.
- 3) Timeliness. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, the amendment shall extend the response time. If necessary, the response time may be extended by fax or telephone and confirmed in the amendment.

h) Pre-Opening Modification or Withdrawal of Bids

- 1) Procedure. Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time and date set for bid opening. A fax modification or withdrawal, or withdrawal received by telephone prior to the time and date set for bid opening, will be effective if followed in writing.

- 2) Disposition of Bid Security. If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

- 3) Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

i) Receipt, Opening and Recording of Bids

- 1) Receipt. Upon its receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening. If a bid is opened in error, the file shall so state.

2) Opening and Recording

- A) Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time, date, and place designated in the Invitation for Bids. The name of each bidder, the bid price, and such other information as is deemed appropriate by the CPO or SPO, shall be recorded and the name of each bidder read aloud or otherwise made available. The names of required witnesses shall also be recorded at the opening.

- B) The winning bid shall be available for public inspection after award, along with the record of the other bids.

- 3) Confidential Data. The CPO or SPO shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data or other information, the bid shall be rejected as nonresponsive.

j) Bid Evaluation and Award

- 1) General. The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids, except as

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permitted in this Section. The Invitation for Bids shall set forth the requirements and criteria that will be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the Invitation for Bids.

2) Responsibility. Responsibility of prospective contractors is covered by Section 1300.2046 (Responsibility) of this Part.

3) Responsiveness. Section 15-85 of the Illinois Procurement Code defines *responsive bidder* as a person who has submitted a bid that conforms in all material respects to the Invitation for Bids.

A) Product or Service Acceptability. The Invitation for Bids shall set forth any evaluation criteria to be used in determining product or service acceptability. It may require the submission of bid samples, descriptive literature, technical data, references, licenses, or other information or material. It may also provide for accomplishing any of the following prior to award:

- i) inspection or testing of a product or service prior to award for such characteristics as quality or workmanship;
- ii) examination of such elements as appearance, finish, taste, or feel; or
- iii) other examinations to determine whether it conforms with any other purchase description requirements.

B) The acceptability evaluation is not conducted for the purpose of determining whether one bidder's product or service capability is superior to another, but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected.

4) Determination of Lowest Bidder. Following determination of product or service acceptability as set forth in this subsection (j), bids will be evaluated to determine which bidder offers the lowest cost to the OAG in accordance with the evaluation criteria set forth in the Invitation for Bids. Only objectively measurable criteria that are set forth in the Invitation for Bids shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost and ownership or life-cycle cost formulas. While evaluation factors need not be precise predictors of actual future costs, they should be, to the extent possible, reasonable estimates based upon information the OAG has available concerning future use and shall provide for equitable treatment of all bids. Pricing for optional good or services or for renewal terms shall not be considered.

5) Price Negotiation. This Section permits negotiations with the low

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bidder to obtain a lower price for the item bid.

k) Documentation of Award  
Following award, a record showing the successful bidder shall be made a part of the procurement file.

l) Award to Other Than Low Bidder  
The CPO or SPO may award to other than the lowest responsible and responsive bidder upon a written determination that award to another bidder is in the State's best interest. The name of the bidder selected, pricing, and the reasons for selecting this bidder instead of the low bidder must be published in the Bulletin.

m) Publicizing Award

The successful bidder shall be notified of award and such notification may be in the form of a letter, purchase order or other clear communication. In procurements over the small purchase limit set in Section 1300.2020 of this Part, notice of award shall be published in the Bulletin.

## Section 1300.2012 Multi-Step Sealed Bidding

a) Definition. Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the OAG, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase, have their price bids considered.

b) Conditions for Use. The multi-step sealed bidding method may be used when it is not practical to prepare initially a definitive purchase description which will be suitable to permit an award based on price. Multi-step sealed bidding may be used when it is considered desirable: 1) to invite and evaluate possible diverse technical offers to determine their acceptability to fulfill the purchase description requirements; and

2) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description.

c) Pre-Bid Conferences in Multi-Step Sealed Bidding

Prior to the submission or evaluation of unpriced technical offers, a pre-bid conference as contemplated by Section 1300.2010 (Competitive Sealed Bidding) and Section 1300.2012 (Multi-Step Sealed Bidding) may be conducted by the CPO or SPO.

d) Procedure for Phase One of Multi-Step Sealed Bidding

1) Form. Multi-step sealed bidding shall be initiated by the issuance of an Invitation for Bids in the form required by Section 1300.2010 (Competitive Sealed Bidding), except as hereinafter provided. In addition to the requirements set forth in Section 1300.2010, the multi-step Invitation for Bids shall



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state:

- A) that unpriced technical offers are requested;
- B) whether priced bids are to be submitted at the same time as unpriced technical offers and, if they are, that such priced bids shall be submitted in a separate sealed envelope;
- C) that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;
- D) the criteria to be used in the evaluation of the unpriced technical offers;
- E) that the OAG, to the extent the CPO or SPO finds necessary, may conduct oral or written discussions of the unpriced technical offers; and
- F) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.

2) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers, and they shall be permitted to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the CPO or SPO, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids shall be cancelled in accordance with Section 1300.2040 (Cancellation of Solicitation; Rejection of Bids or Proposals) of this Part and a new Invitation for Bids issued.

3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers submitted by bidders shall be opened in the presence of at least one witness. Such offers shall not be disclosed to unauthorized persons. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.

4) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:

- A) acceptable;
- B) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
- C) unacceptable, in which case the CPO or SPO shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

5) The CPO or SPO may initiate Phase Two of the procedure if, in the CPO's or SPO's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the CPO or SPO

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finds that such is not the case, the CPO or SPO may commence discussions of the unpriced technical proposals.

6) Discussion of Unpriced Technical Offers. The CPO or SPO may conduct discussions with any vendor who submits an acceptable or potentially acceptable technical offer. During the course of such discussions the CPO or SPO shall not disclose any information derived from one unpriced technical offer to any other bidder. Any such bidder may submit supplemental information amending its technical offer at any time until the closing date established by the CPO or SPO. Such submission may be made at the request of the CPO or SPO or upon the bidder's own initiative.

7) Unacceptable Unpriced Technical Offer. When the CPO or SPO determines a bidder's unpriced technical offer to be unacceptable, such offeror shall not be afforded an additional opportunity to supplement its technical offer.

e) Procedure for Phase Two

1) Initiation. Upon the completion of Phase One, the CPO or SPO shall either:

- A) open priced bids submitted in Phase One (if priced bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; or
- B) if priced bids have not been submitted, invite each acceptable bidder to submit a priced bid.

2) Conduct. Phase Two shall be conducted as any other competitive sealed bid procurement except:

- A) no public notice need be given of this invitation to submit priced bids because such notice was previously given; after award, the unpriced technical offer of the successful bidder shall be disclosed as follows: The CPO or SPO shall examine written requests of confidentiality for trade secrets and proprietary data in the technical offer of such bidder to determine the validity of any such requests. If the parties do not agree as to the disclosure of data, the CPO or SPO shall reject the offer. Such technical offer shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data; and
- C) unpriced technical offers of bidders who are not awarded the contract shall not be open to public inspection.

## Section 1300.2015 Competitive Sealed Proposals

a) Competitive Sealed Proposals may be used whenever permitted by the Code and as described in this Part.

b) The Competitive Sealed Proposal method of source selection may be used to procure the following categories:

- 1) electronic data processing equipment, software, and services;
- 2) telecommunications equipment, software, and services;

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- 3) consulting services; and
  - 4) employee benefits and insurance.
- c) Competitive Sealed Proposals may be used on a case-by-case basis when it is determined by the CPO or SPO that competitive sealed bidding is either not practicable or advantageous.
- 1) "Practicable" Distinguished from "Advantageous." As used in Section 20-15 (Competitive Sealed Proposals) of the Illinois Procurement Code and this Section, the term "practicable" denotes what may be accomplished or put into practical application, and "advantageous" connotes a judgmental assessment of what is in the State's best interest. Competitive sealed bidding may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the State's best interest. Before a contract may be entered into by competitive sealed proposals, the CPO or SPO shall determine in writing that competitive sealed bidding is either not practicable or not advantageous to the OAG.
- 2) General Discussion
- A) If competitive sealed bidding is not practicable or is not advantageous, competitive sealed proposals should be used.
  - B) The key element in determining relative advantage is the need for flexibility. The competitive sealed proposal method differs from competitive sealed bidding in two important ways:
    - i) it permits discussions with competing offerors and changes in their proposals, including price; and
    - ii) it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.
  - C) Where evaluation factors involve the relative abilities of offerors to perform, including degrees of experience or expertise, where the types of supplies or services may require the use of comparative, judgmental evaluations to evaluate them adequately, or where the type of need to be satisfied involves weighing aesthetic values to the extent that price is a secondary consideration, use of competitive sealed proposals is the appropriate procurement method.
- 3) When Competitive Sealed Bidding Is Not Practicable. Competitive sealed bidding is not practicable unless the nature of the procurement permits award to a low bidder who agrees by its bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the Invitation for Bids. Factors to be considered in determining whether competitive sealed bidding is not practicable include:
- A) whether the contract needs to be other than a fixed-price type;
  - B) whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of

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- their proposals;
- C) whether offerors may need to be afforded the opportunity to revise their proposals, including price;
  - D) whether award may need to be based upon a comparative evaluation as stated in the Request for Proposals of differing price, quality (which includes technical and performance capability and the content of the technical proposal), and contractual factors in order to determine the most advantageous offering to the OAG; and
  - E) whether the primary consideration in determining award may not be price.
- 4) When Competitive Sealed Bidding Is Not Advantageous. A determination may be made to use competitive sealed proposals if it is determined that it is not advantageous to the OAG, even though practicable, to use competitive sealed bidding. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:
- A) whether prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the OAG; and
  - B) whether the factors listed in subsection (c)(3) of this Section are desirable in conducting a procurement rather than necessary.
- d) Content of the Request for Proposals
- The Request for Proposals shall be prepared in accordance with Section 1300.2010 (Competitive Sealed Bidding) provided that it shall also include:
- 1) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions; and
  - 2) a statement of when and how price should be submitted.
- e) Receipt and Registrations of Proposals
- Proposals shall not be opened publicly but shall be opened in the presence of at least one witness. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of proposals, a Register of Proposals shall be prepared which shall include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply or service item offered. The Register of Proposals shall be open to public inspection after award of the contract.
- f) Evaluation of Proposals
- 1) Evaluation Factors in the Request for Proposals. The Request for Proposals shall state all of the evaluation factors, including price, and their relative importance.
  - 2) Evaluation. The evaluation shall be based on the evaluation

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factors set forth in the Request for Proposals. Factors not specified in the Request for Proposals shall not be considered. Numerical rating systems may be used but are not required.

- 3) Classifying Proposals. For the purpose of conducting discussions, proposals shall be initially classified as:

- A) acceptable;
- B) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
- C) unacceptable.

- 4) Offerors whose proposals are unacceptable shall be so notified promptly.

- g) Proposal Discussions with Individual Offerors

- 1) "Offerors" Defined. For the purposes of Section 20-15(f) (Competitive Sealed Proposals, Discussion with Responsible Offerors and Revisions of Proposals) of the Illinois Procurement Code and this Section, the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable. The term shall not include businesses who submitted unacceptable proposals.

- 2) Purposes of Discussions. Discussions are held to:

- A) promote understanding of the OAG's requirements and the offerors' proposals; and
- B) facilitate arriving at a contract that will be most advantageous to the OAG, taking into consideration price and the other evaluation factors set forth in the Request for Proposals.

- 3) Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. If during discussions there is a need for any substantial clarification of, or change in, the Request for Proposals, the Request shall be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information derived from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror.

- 4) Best and Final Offers. The CPO or SPO may request best and final offers with a common date and time for submission of best and final offers. The CPO or SPO may conduct additional discussions or change the OAG's requirements and require another submission of best and final offers. If an offeror does not submit either a notice of withdrawal or another best and final offer, that offeror's immediate previous offer will be construed as its best and final offer.

- h) Award

An award shall be made by the CPO or SPO pursuant to a written determination showing the basis on which the award was found to be most advantageous to the OAG, based on the factors set forth in the

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Request for Proposals.

- i) Publicizing Awards

After a contract is entered into, notice of award shall be posted in the CPO's or SPO's office. When the award exceeds the small purchase limit set in Section 1300.2020 of this Part, notice of award shall be published in the Bulletin.

## Section 1300.2020 Small Purchases

- a) Application

Procurements of less than \$10,000 for supplies or services, and less than \$20,000 for professional and artistic services contracts that are for a nonrenewable term of less than one year, may be made without notice, competition or use of any prescribed method of source selection.

- b) In determining whether a contract is under the limit, the value of the contract for the full term and any optional renewals shall be utilized. The stated value of the goods or services, plus any optional goods and services, shall be utilized. Where the term is calculated month-to-month or in a similar fashion, the amount shall be calculated for a twelve month period.

- c) Procurement requirements shall not be artificially divided to avoid using the other source selection methods set forth in Section 20-5 (Methods of Source Selection) of the Illinois Procurement Code or this Part.

- d) If, after signing the contract, the actual need is determined to be \$10,000 or more, and the agency determines that procurement is not appropriate, the procedures for sole source or emergency procurement, whichever is applicable, must be complied with to obtain the additional supplies or services.

## Section 1300.2025 Sole Source Procurement

- a) Application

The provisions of this Section apply to procurement from a sole source unless the estimated amount of the procurement is within the limit set in Section 1300.2020 (Small Purchases) or unless emergency conditions exist as defined in Section 1300.2030 (Emergency Procurements) of this Part.

- b) Conditions for Use of Sole Source Procurement

Sole source procurement is permissible when a requirement is available from only a single supplier or when only one supplier is deemed economically feasible. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror authorized to provide that item. The following are examples of circumstances that could necessitate sole source procurement:

- 1) where the compatibility of equipment, accessories, replacement



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parts, or service is a paramount consideration;

- 2) where a sole supplier's items are needed for trial use or testing;
- 3) where a sole supplier's item is to be procured for commercial resale;
- 4) where public utility regulated services are to be procured; or
- 5) where the item is copyrighted or patented and the item is not available except from the holder of the copyright or patent.

Changes to existing contracts germane to the original contract, which are necessary or desirable to complete the project, and which can be best accomplished by the contract holder, may be procured under this provision.

- c) The determination as to whether a procurement shall be made as a sole source shall be made by the CPO or SPO. Such determination and the basis therefor shall be in writing. Such officer may specify the application of such determination and the duration of its effectiveness. Any request to the CPO that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

- d) The OAG, having defined a sole source, shall publish notice of intent to contract with that vendor in the Bulletin at least 14 days prior to execution of the contract.
  - 1) If no challenge to this determination is made by a vendor within the 14-day period, the CPO or SPO may execute a contract with that vendor.
  - 2) If a challenge is received, the CPO or SPO shall consider the information and shall commence a competitive procurement if the CPO or SPO is convinced the sole source designation is not appropriate, unless an emergency situation now exists.

- e) Negotiation in Sole Source Procurement
  - 1) The CPO or SPO shall conduct negotiations, as appropriate, as to price, delivery, and terms, and shall maintain a record of sole source procurements showing:
    - 1) the vendor's name;
    - 2) the amount and type of the contract;
    - 3) a listing of the supplies, services, or construction procured under each contract; and
    - 4) the identification number of the contract file.

**Section 1300.2030 Emergency Procurements**

- a) Applications
  - 1) The provisions of this Section apply to every procurement over the small purchase limit set in Section 1300.2020 of this Part made under emergency conditions.
- b) Definition of Emergency Conditions
  - 1) A procurement may be made under this Section in situations in

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which:

- A) public health or safety, including the health or safety of any particular person, is threatened;

- B) repairs are needed to OAG property to protect against further loss or damage to OAG property, or to prevent loss or damage to OAG property;

- C) action is needed to prevent or minimize serious disruption in OAG services;

- D) action is needed to ensure the integrity of State or OAG records;

- E) a supplier of needed goods or services announces bankruptcy, going out of business, or loss of franchise, or gives other similar reason such that making a purchase immediately is in the State's best interest;

- F) commodity items are available on the spot market at prices such that good business judgment mandates a purchase if the spot price must be taken immediately;

- G) legal services to assist in the formulation of policy, in drafting or evaluating documents, or in determining the extent of statutory authority are needed sooner than the competitive process would allow; or

- H) equipment or services are necessary in the furtherance of covert activities lawfully conducted by the OAG. Any required disclosures shall be made so as not to jeopardize those covert activities.

- 2) After Unsuccessful Competitive Sealed Bidding or Proposals or Request for Proposals. When bids or proposals received pursuant to a competitive sealed bid or competitive sealed proposal method are unreasonable or noncompetitive, or the price exceeds available funds, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids or proposals, and if emergency conditions exist after an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.

- c) Scope of Emergency Conditions

Emergency procurement shall be limited to those supplies, services, or construction items necessary to meet the emergency.

- d) Authority to Make Emergency Procurements

Emergency procurements may be made when an emergency condition arises and the need cannot be met through normal procurement methods, provided that, whenever practical, existing OAG contracts shall be utilized and, whenever practical, approval by the CPO shall be obtained prior to the procurement. The CPO or SPO shall be responsible for making the filings required in Section 20-30 of the Code.

- e) Source Selection Methods

Any method of source selection, whether or not identified in the Code or this Part, may be used to conduct the procurement in emergency

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situations. The procedure used shall be selected to assure that the required supplies, services, or construction items are procured in time to meet the emergency. Such competition as is practicable shall be obtained.

## f) Determination and Record of Emergency Procurement

1) Determination. The CPO or SPO responsible for procurement shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor. Such determinations shall be kept in the contract file with a copy sent promptly to the CPO.

2) Record. A record of each emergency procurement shall be made as soon as practicable and shall include the following information:

- A) the vendor's name;
  - B) the amount and type of the contract, provided that, if only an estimate of the amount is available immediately, the record shall be supplemented with the final amount once known;
  - C) a description of what the vendor will do or provide, such as a listing of the supplies and services to be procured; and
  - D) the reasons for using the emergency method of source selection.
- 3) Notice of the emergency procurement shall be published in the Bulletin in accordance with Subpart D of this Part.

## Section 1300.2035 Competitive Selection Procedures

## a) Application

The provisions of this Section apply to every procurement of professional and artistic services except those professional and other services necessary to prepare for anticipated litigation, enforcement actions or investigations, which are exempt from the requirements of the Code and This Part. "Professional and artistic services" means those services provided under contract to a State agency by a person or business, acting as an independent contractor, qualified by education, experience, and technical ability [30 ILCS 525/1-15.60].

b) For purposes of this Part, the following principles apply:

- 1) "Qualified by education" means the individual who would perform the services:

- A) must have a license from the Illinois Supreme Court or other law licensing body and that license must have as a prerequisite an advanced degree; or
  - B) must have a license from the Department of Professional Regulation and that license must have as a prerequisite a requirement for a bachelor's or higher degree.
- 2) "Qualified by experience" means the individual must have had at least 5 years experience in providing the services for which the individual is qualified by education.
- 3) "Qualified by Technical Ability" means the individual previously

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performed services of similar nature to those requested by the OAG.

4) Essential elements of professional services are confidence, trust, and belief in not only the ability, but the talent, of the individual performing the service.

5) Professional services are not work or labor oriented in the usual sense of the word but are basically a mental product.

6) When the OAG procures the services identified in subsection (b)(1) above, and requires the minimum experience level and technical ability identified in subsections (b)(2) and (3), then the services are "professional" and these competitive selection procedures must be followed. Otherwise the services must be procured in accordance with Section 20-5 of the Code.

## c) Artistic Services are further defined as follows:

1) If the OAG requires artistic services, such as painting or design, to be performed by one with a certain level of education in the particular field, to have a certain level of past experience, and to have produced the particular type of services in the past, but work of a particular named artist is not required, the services shall be procured as provided in Section 20-35 and Article 35 of the Code and in this Part.

2) If the requested services do not require the vendor to be qualified by education, experience and technical ability, the services shall be procured in accordance with Section 20-5 of the Code and the corresponding rules. When the services of a named artist are requested, the services shall be procured under the sole source procedures of this Code and this Part.

## d) Conditions for Use of Competitive Selection Procedures

Except as authorized under Section 20-25 (Sole Source Procurement) or Section 20-30 (Emergency Procurements) of the Illinois Procurement Code, these competitive selection procedures shall be used for all procurements of professional and artistic services of \$20,000 or more. Any procurement of such services in an amount of less than \$20,000 and for a nonrenewable term of less than one year may be procured in accordance with Section 1300.2020 (Small Purchases) of this Part.

## e) Determinations Required Prior to Use of Competitive Selection Procedures

The CPO shall determine in writing, prior to announcing the need for any such services:

- 1) that the services to be acquired are professional or artistic;
- 2) the nature of the relationship to be established between the OAG and the vendor by the proposed contract; and
- 3) that the OAG has developed, and fully intends to implement, a written plan for utilizing such services which will be included in the contractual statement of work.

## f) Prequalification

The CPO shall maintain a list of prequalified professional and artistic vendors in accordance with Sections 1300.2044 and 1300.2045

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of this Part. Persons may amend statements of qualifications at any time by filing a new statement.

- g) Public Notice in Competitive Selection Procedures  
Notice of the need for professional and artistic services shall be made by the CPO or SPO in the form of a Request for Proposals. Adequate public notice shall be given as provided in Section 1300.2010 (Competitive Sealed Bidding, Public Notice), and additionally may consist of distributing Requests for Proposals to prequalified persons interested in performing the services required by the proposed contract.

h) Request for Proposals

1) Contents. The Request for Proposals shall be in the form specified by the CPO and contain at least the following information:

- A) the type of services required;
  - B) a description of the work involved;
  - C) an estimate of when and for how long the services will be required;
  - D) the type of contract to be used;
  - E) a date by which proposals for the performance of the services shall be submitted;
  - F) a statement of the minimum information that the proposal shall contain, which may include:
    - i) the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;
    - ii) if deemed relevant by the CPO or SPO, the age of the offeror's business and average number of employees over a previous period of time, as specified in the Request for Proposals;
    - iii) the abilities, qualifications, and experience of all persons who would be assigned to provide the required services;
    - iv) a listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time, as specified in the Request for Proposals;
    - v) a plan giving as much detail as is practical explaining how the services will be performed;
  - G) price (to be submitted in a separate envelope in the proposal package and not mentioned elsewhere in the proposal package); and
  - H) the factors to be used in the evaluation and selection process and their relative importance.
- 2) Evaluation. Proposals shall be evaluated only on the basis of evaluation factors stated in the Request for Proposals. Price

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will not be evaluated until after selection of the most qualified vendor. The relative importance of the evaluation factors will vary according to the type of services being procured. The minimum factors are:

- A) the plan for performing the required services;
- B) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;
- C) the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and
- D) a record of past performance of similar work.

i) Pre-Proposal Conferences  
Pre-proposal conferences, as appropriate, may be conducted in accordance with Section 1300.2010 (Competitive Sealed Bidding).

j) Receipt and Handling of Proposals

Registration. Proposals and modifications shall be sent to the CPO or SPO as directed in the solicitation and shall be time-stamped upon receipt and held in a secure place until the established due date and time, at which time they will be opened by the CPO or SPO. Proposals shall not be opened publicly nor disclosed to unauthorized persons, but shall be opened in the presence of at least one witness. A register of proposals shall be established which shall include, for all proposals, the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the services offered. The register of proposals shall be open to public inspection only after award of the contract.

k) Request for Nondisclosure of Data

If the offeror selected for award has requested in writing the nondisclosure of trade secrets and other proprietary data so identified, the head of the agency conducting the procurement or a designee of such officer shall examine the request in the proposal to determine its validity prior to entering negotiations. If the parties do not agree as to the disclosure of data in the contract, the CPO or SPO shall reject the proposal.

l) Discussions

1) Discussions Permissible. The CPO or SPO shall evaluate all proposals submitted and may conduct discussions with any offeror. The purposes of such discussions shall be to:

- A) determine in greater detail such offeror's qualifications; and
  - B) explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach.
- 2) No Disclosure of Information. Discussions shall not disclose any



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information derived from proposals submitted by other offerors, and the agency conducting the procurement shall not disclose any information contained in any proposals until after award of the proposed contract has been made. The proposal of the offeror awarded the contract shall be open to public inspection.

- m) Selection of the Best Qualified Offerors  
After conclusion of validation of qualifications, evaluation, and discussion, the CPO or SPO shall rank the acceptable offerors in the order of their respective qualifications.

- n) Evaluation of Pricing Data

Pricing submitted for all acceptable proposals shall be opened and ranked. If the low price is submitted by the most qualified vendor, negotiation of price shall commence. If the price of the most qualified is not low and if it is under \$25,000, the CPO or SPO may award to that vendor. If the price is over \$25,000, the CPO or SPO must state why the qualifications were deemed more important than price and such determination shall be published in the Bulletin.

- o) Negotiation and Award of Contract

1) General. The CPO or SPO shall negotiate a contract with the best qualified offeror for the required services at compensation determined in writing to be fair and reasonable.

- 2) Elements of Negotiation. Contract negotiations shall be directed toward:

- A) making certain that the offeror has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;
- B) determining that the offeror will make available the necessary personnel and facilities to perform the services within the required time; and
- C) agreeing upon compensation that is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity, and nature of such services.

- 3) Successful Negotiation of Contract with Best Qualified Offeror. If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror, unless the procurement is cancelled.

- 4) Failure to Negotiate Contract with Best Qualified Offeror.

- A) If compensation, contract requirements, or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons therefor shall be placed in the file and the CPO or SPO shall advise such offeror of the termination of negotiations.

- B) Upon failure to negotiate a contract with the best qualified offeror, the CPO or SPO may enter into negotiations with the next most qualified offeror, and so on in that manner until an award is made or the procurement is cancelled.

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- p) Notice of Award

Written notice of award shall be public information and made a part of the contract file. The CPO shall publish the names of the responsible decision makers of the OAG, the successful vendor, a contract reference number or other identifier, and the value of the contract. Publication shall be in the next available issue of the Bulletin.

## Section 1300.2036 Other Methods of Source Selection

- a) Split Award

1) An award of a definite quantity requirement may be split between or among two or more contractors. Each portion shall be for a definite quantity and the sum of the portions shall be the total definite quantity required. A split award may be used only when award to more than one bidder or offeror for different amounts of the same item are necessary to obtain the total quantity or the required delivery.

2) The CPO or SPO shall make a written determination setting forth the reasons for the split award, which determination shall be made a part of the procurement file.

- b) Multiple Award

1) A multiple award is an award of an indefinite quantity contract to more than one bidder or offeror when the OAG is obligated to order all of its actual requirements from those vendors.

2) A multiple award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple award shall be made in accordance with the provisions of Section 1300.2010 (Competitive Sealed Bidding), Section 1300.2015 (Competitive Sealed Proposals), Section 1300.2020 (Small Purchases), and Section 1300.2030 (Emergency Procurements), as applicable. Awards shall not be made for the purpose of simply dividing the business or to select products or suppliers in accordance with user preference unrelated to utility or economy. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements of the OAG.

3) The OAG shall reserve the right to take bids separately if a particular quantity requirement arises that exceeds its normal requirement or an amount specified in the contract.

4) If a multiple award is anticipated, the solicitation shall state this fact as well as the criteria for award.

- c) Auction

Purchases may be made at auction in accordance with the procedural requirements applicable to the particular auction. Notice and competition is not required and the amount payable shall be the amount bid and accepted plus any required buyer's premium.

- d) Non-governmental Joint Purchase

The CPO or SPO may enter into an agreement with a person not eligible

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for the Governmental Joint Purchasing Act for the joint procurement of anything covered by the Code. Any method of source selection may be used and may be modified or adopted to meet the needs of the non-State entity.

- e) Federal Requirements
  - Requirements of the Code and this Part may be modified or adapted to meet federal requirements.
- f) Donations
  - With approval of the CPO, when the OAG receives a donation that provides the majority of the funding, the OAG may follow any procurement or contracting requirements established as a condition of the donation, but shall follow the Code and this Part to the extent practicable.

**Section 1300.2037 Tie Bids and Proposals**

- a) Tie bids or proposals are those from responsive and responsible vendors that are identical in price or evaluation.

- b) Tie bids or proposals will be treated as follows:

1) If the tied vendors include only one Illinois resident vendor the Illinois resident vendor shall be given the award. "Illinois resident vendor" has the meaning given in Section 1300.4510 of this Part. In all other situations, the decision shall be made in accordance with subsections (b)(2) through (5) of this Section. If two or more Illinois resident vendors are tied, award will be made pursuant to subsections (b)(2) through (5).

2) If there is a significant difference in responsibility (including ability to provide the service or deliver in the quantity and at the time required), the award will be made to the vendor who is deemed to be the most responsible. A vendor who has had experience in contracting with the State or OAG shall be given additional consideration in determining responsibility if the CPO or SPO determines that dealing with a vendor that has knowledge of State requirements, contracts, job sites, payment practices and such other factors and with which there has been favorable past experience increases the likelihood of successful performance.

3) If there is no significant difference in responsibility, but there is a difference in the quality of the goods or services offered, the vendor offering the best quality will be accepted.

4) If there is no significant difference in responsibility and no difference in quality of the goods or services offered, the vendor offering the earliest delivery time will be accepted in any case in which the solicitation specified that the needs of the OAG require as early delivery as possible.

5) If the bids or proposals are equal in every respect, the award shall be made by lot unless the CPO or SPO determines that splitting the award among two or more of the tied bidders is in

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the best interest of the State. Awards may be split if all affected bidders agree, if splitting is feasible given the type of goods or service requested, if overall pricing would not increase, if delivery would be better ensured, or if necessary or desirable to promote future competition.

- c) Record
  - Records shall be made of all procurements on which tie bids or proposals are received, showing at least the following information:
    - 1) the identification number of the solicitation;
    - 2) the supply, service, or construction item; and
    - 3) a listing of all the bidders and the prices submitted.

**Section 1300.2038 Mistakes**

- a) General

Corrections to bids, proposals or other procurement processes are allowed, but only to the extent not contrary to the best interest of the State or the fair treatment of other bidders.

- b) Mistakes Discovered Before Opening

A vendor may correct mistakes discovered before the time and date set for opening by withdrawing or correcting as provided in this Section.

- c) Confirmation of Mistake

When the CPO or SPO knows or has reason to conclude that a mistake has been made, such officer should request the vendor to confirm the information. Situations in which confirmation should be requested include obvious or apparent errors on the face of the document or a price unreasonably lower than the others submitted. If the vendor alleges a mistake, the bid or proposal may be corrected or withdrawn if the conditions set forth in this Section, as applicable, are met.

- d) Mistakes in Bids Discovered After Opening but Before Award
- This subsection (d) sets forth procedures to be applied in situations in which mistakes in bids are discovered after the time and date set for bid opening but before award.

1) Minor informalities. A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation of a bid from the exact requirement of the Invitation for Bids, the correction or waiver of which would not be prejudicial to the OAG (i.e., the effect on price, quality, quantity, delivery, or contractual conditions is negligible). The CPO or SPO shall waive such informalities or allow the bidder to correct them depending on which is in the best interest of the State. Minor informalities include insignificant mistakes where the effect on price, quantity, quality, delivery, or contractual conditions is negligible. Examples of minor informalities as to form include the failure of a bidder to:

- A) return the number of signed bids required by the Invitation for Bids;

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- B) sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound, including but not limited to signature on an auxiliary form, submission of a bid guarantee or submission of a signed transmittal letter; or
- C) acknowledge receipt of an amendment to the Invitation for Bids, but only if:
- i) it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or
  - ii) the amendment involved had a negligible effect on price, quantity, quality, or delivery.
- 2) Mistakes Where Intended Correct Bid Is Evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.
- 3) Mistakes Where Intended Correct Bid Is Not Evident. A bidder may be permitted to withdraw a low bid if:
- A) a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
  - B) the bidder submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.
- e) Mistakes Discovered After Receipt of Proposals but Before Award. This subsection (e) sets forth procedures to be applied in four situations in which mistakes in proposals are discovered after receipt of proposals but before award.
- 1) During Discussions; Prior to Best and Final Offers. Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake prior to the date set for conclusion of discussions or for receipt of best and final offers.
  - 2) Minor Informalities. Minor informalities, unless otherwise corrected by an offeror as provided in this Section, shall be treated as they are under competitive sealed bidding. (See subsection (d) above.)
  - 3) Corrections of Mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:
    - A) the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn; or
    - B) the mistake is not clearly evident on the face of the proposal, but the offeror submits adequate proof that clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer, and such

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- correction would not be contrary to the fair and equal treatment of other offerors.
- 4) Withdrawal of Proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:
- A) the mistake is clearly evident on the face of the proposal and the intended correct offer is not;
  - B) the offeror submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made but does not demonstrate the intended correct offer; or
  - C) the offeror submits adequate proof that clearly and convincingly demonstrates the intended correct offer, but to allow corrections would be contrary to the fair and equal treatment of other offerors.
- f) Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract except where the CPO or SPO finds it would be unconscionable not to allow the mistake to be corrected.
- g) Determinations Required. When a proposal is corrected or withdrawn, or correction or withdrawal is denied, a written determination shall be prepared showing that relief was granted or denied in accordance with this Part. The CPO or SPO shall prepare the determination.

### Section 1300.2040 Cancellation of Solicitations; Rejection of Bids or Proposals

- a) Scope of this Section. The provisions of this Section shall govern the cancellation of any solicitations whether issued by the OAG under competitive sealed bidding, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part.
- b) Policy. Any solicitation may be cancelled when the CPO or SPO believes cancellation to be in the State's best interest. Nothing shall compel the award of a contract.
- c) Cancellation of Solicitation; Rejection of All Bids or Proposals Prior to Opening.
  - 1) As used in this Section, "opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.
  - 2) Prior to opening, a solicitation may be cancelled in whole or in part when the CPO or SPO determines in writing that such action is in the State's best interest for reasons including, but not limited to:



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- A) the OAG no longer requires the supplies, services, or construction;
  - B) the OAG no longer can reasonably expect to fund the procurement; or
  - C) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.
- 3) When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all businesses solicited.
- 4) The notice of cancellation shall:
- A) identify the solicitation;
  - B) briefly explain the reason for cancellation; and
  - C) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar supplies, services, or construction.
- d) Cancellation of Solicitation; Rejection of All Bids or Proposals After Opening
- 1) After opening but prior to award, all bids or proposals may be rejected in whole or in part when the CPO or SPO determines in writing that such action is in the State's best interest, for reasons including, but not limited to:
    - A) the supplies, services, or construction being procured are no longer required;
    - B) ambiguous or otherwise inadequate specifications were part of the solicitation;
    - C) the solicitation did not provide for consideration of all factors of significance to the OAG;
    - D) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
    - E) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
    - F) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
  - 2) When the solicitation is cancelled or when all bids or proposals are rejected, all vendors who submitted bids or proposals shall be sent a notice informing them of the cancellation or rejection.
- e) Documentation
- The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.
- f) Rejection of Individual Bids or Proposals
- 1) General. This subsection (f) applies to rejections of individual bids or proposals in whole or in part.
  - 2) Notice in Solicitation. Each solicitation issued by the OAG shall provide that any bid or proposal may be rejected in whole or in part when in the best interest of the State as provided in this Section.

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- 3) Reasons for Rejection.
- Reasons for rejecting a bid or proposal may include, but are not limited to:
- A) the business that submitted the bid or proposal is nonresponsible as determined under Section 1300.2046 of this Part;
  - B) the bid or proposal is not responsive, that is, it does not conform in all material respects to the solicitation;
  - C) the proposal ultimately (that is, after any opportunity has passed for altering or clarifying the proposal) fails to meet the announced requirements of the OAG in some material respect;
  - D) the supply or service item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the Invitation for Bids; or
  - E) the proposed price is clearly unreasonable.
- 4) Notice of Rejection. Upon request, unsuccessful bidders or offerors shall be advised of the reasons for rejection.
- g) Disposition of Bids or Proposals
- When bids or proposals are rejected, or a solicitation cancelled after bids or proposals are received, the bids or proposals that have been opened shall be retained in the procurement file, or if unopened, returned to the bidders or offerors upon request, or otherwise disposed of.

## SUBPART F: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

## Section 1300.2043 Suppliers

- a) The OAG may contract with any qualified source of supply, but must give preference to Directed Sources, and should consider the following Special Sources.
- b) Directed Sources--State-Produced Supplies or Service
  - 1) Correctional Industries. The CPO, in conjunction with the Department of Corrections, shall determine which supplies produced or services performed, if any, by Correctional Industries must be purchased by the OAG. The CPO shall determine whether such supplies or services meet the OAG's requirements and whether the price represents a fair market value for such supplies or services.
  - 2) Central Services. Supplies and services available from the program operations of the Department of Central Management Services will be utilized unless the CPO authorizes procurement from other sources.
- c) Special Sources
  - 1) Prior to any equipment procurement, the OAG will consider

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property available from the State and Federal Surplus Warehouses that are under the jurisdiction of the Department of Central Management Services.

- 2) Various goods and services are available from qualified workshops for the disabled and procurement from these workshops is encouraged. Notice and competition is not required pursuant to Section 45-35 of the Code. Information regarding qualified workshops will be obtained from DCMS.
- 3) Various goods and services are available from State Agencies and other governmental units. These may be procured without notice and competition.

**Section 1300.2044 Vendor List/Required Use**

- a) The CPO may maintain a list of vendors interested in doing business with the OAG. Lists of names and addresses of bidders shall be available for public inspection.
- b) Inclusion or exclusion from the vendor list of the name of a business does not indicate whether the business is responsible in respect to a particular procurement or otherwise capable of successfully performing a State contract.
- c) Invitations for Bids and other solicitations will be sent to vendors on the vendor list for goods or services in question, except in the following cases:
  - 1) The vendor does not sell the particular commodity or equipment;
  - 2) When the number of vendors for a procurement classification is of such magnitude that optimum prices may reasonably be expected without soliciting the entire vendor list, the OAG may, if it determines that the best interest of the State would be served, rotate the selection from the list on any equitable basis; or
  - 3) The Invitations for Bids may be confined to bidders in a limited geographical service area, when the OAG determines that the best interests of the State will be served by so doing (example: purchases of ready-mix concrete, perishables, and equipment requiring periodic service).
- d) The CPO or SPO in the OAG may alternatively refer to vendor lists maintained by DCMS.

**Section 1300.2045 Prequalification**

- a) General
  - 1) The CPO may require that vendors be prequalified as a condition of being placed on the bid list. If so, vendors shall be given an opportunity to prequalify at least one time per year. The opportunity to prequalify, and whether prequalification will be a condition of bidding or being awarded a contract, shall be announced in the Bulletin.
  - 2) The fact that a prospective vendor has been prequalified does not

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necessarily represent a finding of responsibility for a particular procurement.

- 3) Except in the case of professional and artistic services, distribution of and responses to the solicitation may be limited to prequalified vendors and award of a contract may be denied because a vendor was not prequalified.
- b) Professional and Artistic Services
 

When the services are needed on a recurring basis, the CPO shall actively solicit persons engaged in providing such services to submit annual statements of qualifications in a prescribed format that shall include the following information:

  - 1) technical education and training;
  - 2) general or special experience, certifications, licenses, and memberships in professional associations, societies, or boards;
  - 3) an expression of interest in providing a particular professional or artistic service; and
  - 4) any other pertinent information requested by the CPO or SPO.
- c) Qualified Products Lists
 

Qualified products lists are treated in Section 1300.2050 (Specifications and Samples) of this Part.

**Section 1300.2046 Responsibility**

- a) Application
 

Contracts are to be made only with responsible vendors unless no responsible vendor is available to meet the OAG's needs. If there is doubt about responsibility, and if a bond or other security would adequately protect the State's interests, then that vendor may be awarded a contract upon receipt of the bond or other security.
- b) Standards of Responsibility
  - 1) Standards. Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective vendor:
    - A) has available the appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain same) necessary to indicate its capability to meet all contractual requirements;
    - B) is able to comply with required or proposed delivery or performance schedules, taking into consideration all existing commercial and governmental commitments;
    - C) has a satisfactory record of performance. Vendors who are or have been deficient in current or recent contract performance in dealing with the State or other customers may be deemed "not responsible" unless the deficiency is shown to have been beyond the reasonable control of the vendor;
    - D) has a satisfactory record of integrity and business ethics. Vendors who are under investigation or indictment for criminal or civil actions that bear on the particular

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procurement or that would make contracting with that vendor undesirable may be declared not responsible for the particular procurement;

E) is qualified legally to contract with the State;

F) has supplied all necessary information in connection with the inquiry concerning responsibility;

G) has a current Public Contracts number from the Illinois Department of Human Rights, if required. Proof of application prior to opening of bids or proposals will be sufficient for an initial determination; and

H) pays prevailing wages, if required by law.

2) Information Pertaining to Responsibility. The prospective vendor shall supply information requested by the CPO or SPO concerning the responsibility of such vendor. The State may supplement this information from other sources and may require additional documentation at any time. If such vendor fails to supply the requested information, the CPO or SPO shall base the determination of responsibility upon any available information, or may find the prospective vendor nonresponsible.

c) Ability to Meet Standards

The prospective vendor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- 1) evidence that such vendor possesses such necessary items;
- 2) acceptable plans to subcontract for such necessary items; or
- 3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

d) Duty Concerning Responsibility

Before awarding a contract, the CPO or SPO must be satisfied that the prospective vendor is responsible. Responsibility can be proven until time of award or execution of contract, whichever is later.

e) Written Determination of Nonresponsibility Required

If a vendor who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the CPO or the SPO. A copy of the determination shall be sent promptly to the nonresponsible vendor. The final determination shall be made part of the procurement file.

f) Vendors not having a history of performance may be considered responsible if no other disqualifying factors exist. A bond or other security may be required for such bidders.

g) Vendors who are newly formed business concerns having substantially the same owners, officers, directors, or beneficiaries as a previously existing nonresponsible vendor will be declared nonresponsible unless the new organization can prove it was not set up for the purpose of avoiding an earlier declaration of nonresponsibility.

SUBPART G: BID, PROPOSAL AND PERFORMANCE SECURITY

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## Section 1300.2047 Security Requirements

a) The CPO or SPO may require that a vendor furnish bid, proposal, or performance security on OAG contracts. Whenever security is required, except as provided herein, the procurement document will clearly indicate the type and amount of security.

b) Security, unless otherwise specified, may be in the form of cashier's check, certified check, money order, irrevocable letter of credit or bond. Any bond must be issued by a surety company authorized to do business in the State of Illinois.

c) Unless the amount is set by law, the CPO or SPO will determine the amount, in dollars or percentage of contract price, that will adequately protect the State's interests.

d) A vendor may be required to furnish up to 100% performance security at any time during contract performance and at its cost, if it appears that delivery or production schedules cannot be met, quality is poor, responsibility is questioned and for similar reasons.

e) Permissive/Mandatory Security

1) Bid or proposal security is permissive on any contract but is not appropriate on emergency or sole source procurements.

2) Performance security is permissive on any contract and is recommended on contracts calling for advance payment.

3) Performance security is required on all public works contracts.

f) A vendor may submit a single or continuous security each year that will be applicable on all contracts of the OAG. When such security has been obligated in an amount equal to the sum of accumulated security requirements, additional security must be submitted.

g) Bid or proposal security will be returned to unsuccessful vendors as soon after award as possible. The bid or proposal security of the successful vendor will be returned after contracts have been signed and performance security, if any, submitted. Performance security will be returned upon full performance.

## SUBPART H: SPECIFICATIONS AND SAMPLES

## Section 1300.2050 Specifications and Samples

a) CPO's Responsibilities Regarding Specifications

1) The CPO or SPO is authorized to write specifications for procurements for the OAG.

2) When a written determination is made by the CPO or SPO authorized to prepare such specifications that there will be no substantial conflict of interest involved and it is otherwise in the best interest of the State, a contract to prepare specifications for OAG use in procurement of supplies or services may be entered into provided the CPO or SPO retains the authority to finally approve the specifications.

3) If a specification for general or common use or a qualified



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products list exists for an item to be procured under Section 20-20 of the Code (Small Purchases), it shall be used except as otherwise authorized by the CPO. If no such specification exists, the CPO or SPO is hereby granted the authority to prepare specifications for use in such purchases. In an emergency under Section 20-30 of the Code (Emergency Procurements), any necessary specification may be utilized by the CPO or SPO without regard to the provisions of this Subpart.

## b) Procedures for the Development of Specifications

- 1) If a specification for a common or general use item has been developed or a qualified products list has been developed in accordance with this Section for a particular supply or service, it shall be used unless the CPO authorizes use of another specification.
- 2) All procurements shall be based on specifications that accurately reflect the OAG's needs. Specifications shall clearly and precisely describe the salient technical or performance requirements.
- 3) Specifications shall not include restrictions that do not significantly affect the technical requirements or performance requirements, or other legitimate OAG needs. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply or service, or procurement from a sole source, unless no other manner of description will suffice.
- 4) Any specifications or standards adopted by business, industry, not-for-profit organization or governmental unit may be adopted by reference.
- 5) A specification may provide alternate descriptions where two or more design, functional, or performance criteria will satisfactorily meet the OAG's requirements.

## c) Brand Name or Equal Specification

- 1) Brand name or equal specifications may be used when the CPO or SPO determines in writing that:
  - A) no specification for a common or general use specification or qualified products list is available;
  - B) time does not permit the preparation of another form of specification, not including a brand name specification;
  - C) the nature of the product or the nature of the OAG's requirement makes use of a brand name or equal specification suitable for the procurement; or
  - D) use of a brand name or equal specification is in the State's best interest.
- 2) Brand name or equal specifications shall seek to designate more than one brand as "or equal", and shall further state that substantially equivalent products to those designated will be considered for award.
- 3) Required Characteristics. Unless the CPO or SPO authorized to

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approve specifications determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics that are required.

- 4) Nonrestrictive Use of Brand Name or Equal Specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. "Or equal" submissions will not be rejected because of minor differences in design, construction or features that do not affect the suitability of the product for its intended use. Burden of proof that the product is equal is on the bidder.

## d) Brand Name Only Specification

- 1) Use. A brand name only specification may be used only when the CPO or SPO makes a written determination that only the identified brand name item or items will satisfy the OAG's needs. Brand name alone may be specified in order to ensure compatibility in existing systems, to preserve warranty, to ensure maintenance, or as authorized in writing by the CPO or SPO.
- 2) Competition. The CPO or SPO shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 1300.2025 (Sole Source Procurement).

## e) Qualified Products List

- 1) Use. A qualified products list may be developed with the approval of the CPO or SPO authorized to develop qualified products lists, when testing or examination of the supplies prior to issuance of the solicitation is desirable or necessary in order to best satisfy OAG requirements.
- 2) Solicitation. When developing a qualified products list, a representative group of potential suppliers shall be solicited in writing to submit products for testing and examination to determine acceptability for inclusion in a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration during the time allowed for testing and examination.
- 3) Testing and Confidential Data. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with established requirements. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in writing by the supplier.

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- limitations as to when they should be utilized by the OAG in its procurements. Types of contracts not mentioned in this Section may also be utilized.
- b) Prohibition of Cost-Plus-a-Percentage-of-Cost Contracting  
The cost-plus-a-percentage-of-cost contract is prohibited by Section 20-55 (Types of Contracts) of the Illinois Procurement Code and by this Part. This type of contracting may not be used alone or in conjunction with an authorized type of contract.
  - c) Types of Fixed-Price Contracts
    - 1) Firm Fixed-Price Contract. A firm fixed-priced contract provides a price that is not subject to adjustment because of variations in the contractor's cost of performing the work specified in the contract.
    - 2) Fixed-Price Contract with Price Adjustment.
      - A) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in contractor price can be made shall be specified in the solicitation and the resulting contract. Adjustment allowed may be upward or downward only, or both upward and downward. Examples of conditions under which adjustments may be provided in fixed-price contracts are:
        - i) changes in the contractor's labor agreement rates as applied to industry or areawide (such as are frequently found in State contracts for the purchase of coal);
        - ii) changes due to rapid and substantial price fluctuations, which can be related to an accepted index (such as contracts for gasoline, heating oils, and dental gold alloy); and
        - iii) in requirement contracts when a general price change applicable to all customers occurs, or when a general price change alters the base price (such as a change in a manufacturer's published price list or posted price to which a fixed discount is applied pursuant to the contract to determine the contract price).
      - B) If the contract permits unilateral action by the contractor to bring about the condition under which a price increase may occur, the OAG shall have the right to reject the price increase and terminate without cost the future performance of the contract.
  - d) Cost-Reimbursement Contracts
    - 1) Determination Prior to Use.
      - A) A cost-reimbursement type contract may be used only when the CPO or SPO determines in writing that such a contract is likely to be less costly to the OAG than any other type or

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- f) Proven Products  
The supply or service may be rejected if it has not been offered to other governmental or commercial accounts for at least one year. Specifications may require that the supply or services must have been used in business or industry for a specified period of time to be considered.
  - g) OAG Required Samples
    - 1) Any required samples must be submitted as instructed in the solicitation with transportation prepaid by the vendor. Each sample must be labeled with the vendor's name, address and a means of matching the sample with the applicable bid or proposal.
    - 2) Any sample submitted must be representative of the item that would be delivered if a contract were awarded for that item. Samples submitted by a successful vendor will be retained to check continuing quality. Submission of samples will not limit the OAG's right to require adherence to specifications.
    - 3) No payment will be made for OAG Required Samples. Samples not destroyed or consumed by examination or testing will be returned upon request at vendor's expense. Such request must be made at time of submission with return collect or prepayment provisions and instructions for return of the samples.
  - h) Product Demonstration  
Any vendor may request time and space to demonstrate a product or service. Agreement to allow such demonstration will be solely at the OAG's discretion and will not entitle the bidder to a contract nor shall payment for the demonstration be allowed unless a written contract had been executed prior to the demonstration.
  - i) Specifications Prepared by Other Than OAG Personnel
    - 1) Specifications may be prepared by other than OAG personnel, including, but not limited to, other State personnel, consultants, architects, engineers, designers, and other drafters of specifications for public contracts. Contracts for the preparation of specifications by other than OAG personnel shall require the specification writer to adhere to the Code and OAG requirements.
    - 2) The person who prepared the specifications shall not submit a bid or proposal to meet the procurement need unless the CPO or SPO determines in writing that it would be in the best interest to accept such a bid or proposal from that person and a notice to that effect is provided to the CPO and is published in the Bulletin. The CPO may disapprove that determination.
- SUBPART I: CONTRACT TYPE
- Section 1300.2055 Types of Contracts
- a) Scope of Rule  
This Section contains descriptions of types of contracts and

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that it is impracticable to obtain otherwise the supplies, services, or construction.

B) Reimbursement of travel expenses in accordance with applicable travel control board regulations is authorized without further determinations.

2) Cost Contract. A cost contract provides that the contractor will be reimbursed for allowable costs incurred in performing the contract, but will not receive a fee.

3) Cost-Plus-Fixed-Fee Contract. This is a cost-reimbursement type contract that provides for payment to the contractor of an agreed fixed fee in addition to reimbursement of allowable incurred costs. The fee is established at the time of contract award and does not vary if the actual cost of contract performance is greater or less than the initial estimated cost established for such work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the scope of work specified in the contract. The cost-plus-fixed-fee contract can be either a Completion Form or Term Form.

4) Cost Incentive Contracts.

A) General. A cost-incentive type of contract provides for the reimbursement to the contractor of allowable costs incurred up to the ceiling amount and establishes a formula whereby the contractor is rewarded for performing at less than target cost (that is, the parties' agreed best estimate of the cost of performing the contract will vary inversely with the actual, allowable costs of performance and consequently is dependent on how effectively the contractor controls cost in the performance of the contract).

B) Fixed-Price Cost-Incentive Contract. In a fixed-price cost-incentive contract, the parties establish at the outset a target cost, a target profit (that is, the profit that will be paid if the actual cost of performance equals the target cost), a formula that provides a percentage increase or decrease of the target profit depending on whether the actual cost of performance is less than or exceeds the target cost, and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable costs as provided in the contract. The final contract price is then established in accordance with the formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The contractor is obligated to complete performance of the contract, and, if actual costs exceed the ceiling price, the contractor will suffer the loss.

C) Cost-Reimbursement Contract with Cost-Incentive Fee. In a

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cost-reimbursement contract with cost-incentive fee, the parties establish at the outset a target cost; a target fee; a formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling that represents the maximum amount that the OAG is obligated to reimburse the contractor. The contractor continues performance until the work is complete or costs reach the ceiling specified in the contract, including any modification thereof, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred, allowable costs reimbursed as provided in the contract are applied to the formula to establish the incentive fee payable to the contractor.

e) Performance Incentive Contracts

In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals, and a formula that varies the profit or the fee if the specified performance goals are exceeded or not met. For example, early completion may entitle the contractor to a bonus, while late completion may entitle the OAG to a price decrease.

f) Time and Materials Contracts; Labor Hour Contracts

Time and materials contracts provide an agreed basis for payment for materials supplied and labor performed. Labor hour contracts provide only for the payment of labor performed. Such contracts shall, to the extent possible, contain a stated ceiling or an estimate that shall not be exceeded without prior OAG approval.

g) Definite Quantity and Indefinite Quantity Contracts

1) Definite Quantity. A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.

2) Indefinite Quantity. An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type. Generally an approximate quantity or the best information available as to quantity is stated in the solicitation. The contract may provide a minimum quantity the OAG is obligated to order and may also provide for a maximum quantity provision that limits the OAG's obligation to order.

3) Requirements Contracts. A requirements contract is an indefinite quantity contract for supplies or services that specifically obligates the OAG to order all the actual requirements of the OAG during a specified period of time.

h) Leases

A lease is a contract for the use of supplies or real property under which title will not pass to the State at any time.

i) Recovery Contracts



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Contracts may provide for payment to the vendor of a percentage of the amount the vendor recovers or collects on behalf of the State. The percentage may be fixed or may vary depending on amount of recovery or other factors, and the percentage may be paired with a fixed price or cost reimbursement method.

## j) Option Provisions

- 1) Contract Provision. When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. These options may be exercised without taking other procurement action when the option is established for exercise at the OAG's option.
- 2) Lease with Purchase Option. A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding or competitive sealed proposals, the leased supply or facility is the only supply or facility that can meet the OAG's requirements, or if the purchase option price is less than the small purchase limit or if emergency conditions exist.

## k) State Produced Supplies and Services

Notwithstanding any provision in any contract, supplies or services available from the State's own programs, such as Correctional Industries, may be ordered without violating any contract.

## l) Extraordinary Quantities

Notwithstanding any provision in any contract, the OAG reserves the right to take bids separately if a particular quantity requirement arises that exceeds the OAG's normal needs or ordering requirements.

## m) Energy Conservation

The CPO may authorize an Invitation for Bids, Request for Proposals or sole source negotiation for energy conservation measures whereby the OAG would make payment based on utility cost savings. Such contract shall require a clearly defined baseline of energy usage and method of measuring cost savings taking into account at least differing weather conditions, changes in facility, usage and cost of energy.

## SUBPART J: DURATION OF CONTRACTS

## Section 1300.2060 Duration of Contracts - General

## a) General

- 1) A multi-term contract for a term up to 10 years is authorized when it is in the best interest of the State.
- 2) A software license may have a term longer than 10 years, including for a perpetual term, provided the payment term is limited to no more than 10 years.
- b) The contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability of funds therefor. The contract shall provide that, in the event that funds are not available for any succeeding fiscal period, the

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remainder of such contract shall be cancelled without penalty to, or further payment being required by, the OAG. This provision applies to only those contracts that are funded in whole or in part by funds appropriated by the Illinois General Assembly or other governmental entity.

## c) Conditions for Use of Multi-Term Contracts

A multi-term contract may be used when:

- 1) special production of definite quantities or the furnishing of long-term services are required to meet OAG needs; or
- 2) a multi-term contract will serve the best interests of the State by encouraging effective competition or otherwise promoting economies in OAG procurement. The following factors are among those relevant to such a determination:
  - A) firms that are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;
  - B) lower production costs because of larger quantity of service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;
  - C) stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality; or
  - D) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

## d) Multi-Term Contract Procedure

The solicitation shall state:

- 1) the proposed term;
- 2) the amount of supplies or services required for the proposed contract period;
- 3) whether bidders or offerors may submit prices for:
  - A) the first fiscal period only;
  - B) the entire time of performance only; or
  - C) both the first fiscal period and the entire time of performance; and
- 4) that a multi-term contract may be awarded and how award will be determined.

## e) Renewals

- 1) Where the original procurement specifically called for an initial term plus renewals, the renewals may be exercised without further procurement activity, provided the initial term and the exercised renewals may not exceed 10 years, the terms and conditions do not change except as provided in the contract (such as price escalations tied to an index) and the option is reserved solely to the OAG.
- 2) Where the original procurement was silent as to renewals, the

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renewal must be within the guidelines for small, sole source or emergency procurements as set forth in the Code and this Part.

## SUBPART K: CONTRACT MATTERS

**Section 1300.2560 Prevailing Wage**

- a) For the following classifications and if competition exists, no bidder will be awarded a contract unless its employees are paid wages and benefits and are working under conditions prevalent in the location where the work is to be performed.
- 1) Public works
  - 2) Printing
  - 3) Janitorial cleaning, window washing, food and security guard services having a monthly contract price of \$200 or more or a yearly price of \$2,000 or more.

- b) Prevailing wage and conditions prevalent means the hourly wage rate, overtime, holiday pay, pension, welfare, premium differential, vacation pay and other benefits received by employees and the environmental conditions under which they work.

- c) Prevailing wage rates, benefits and conditions will be those in effect on the first date of the contract, provided that if the rate changes during the contract term and the amount of change is known before execution of the contract, then the contract rate will vary in like amount. If the increase cannot be determined in advance, the contract will be increased by the amount of the contract or the agency may cancel the contract. The amount that may vary includes all components of price that are dependent on the usage rate, provided that profit shall not increase due to prevailing wage increases. If the initial prevailing wage, etc., cannot be determined prior to execution, contracts may be entered into and will remain valid for the stated term.

- d) If a collective bargaining agreement is in effect governing the type of printing, janitorial cleaning, window washing, food or security guard service sought, that agreement will define minimum wages, benefits and conditions that must be paid in order for a bidder to be considered responsible.

- e) For Public Works, location means the county where the physical work upon public works is performed, except that if there is not available in the county a sufficient number of competent skilled laborers, workers and mechanics to construct the public works efficiently and properly, "locality" includes any other county nearest the one in which the work or construction is to be performed and from which such persons may be obtained in sufficient numbers to perform the work.

- f) For Printing Contracts, location means one of the following areas:

- 1) Cook County
- 2) Boone, Bureau, Carroll, Champaign, DeKalb, Dewitt, DuPage, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Daviess,

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Kane, Kankakee, Kendall, Knox, Lake, LaSalle, Lee, Livingston, Logan, Marshall, Mason, McDonough, McHenry, McLean, Mercer, Ogle, Peoria, Piatt, Putnam, Rock Island, Schuyler, Stark, Stephenson, Tazewell, Vermilion, Warren, Whiteside, Will, Winnebago, Woodford.

- 3) Adams, Alexander, Bond, Brown, Calhoun, Cass, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin, Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macon, Macoupin, Madison, Marion, Massac, Menard, Monroe, Montgomery, Morgan, Moultrie, Perry, Pike, Pope, Pulaski, Randolph, Richland, Saline, Sangamon, Scott, Shelby, St. Clair, Union, Wabash, Washington, Wayne, White, Williamson.

- 4) Where the printing is performed in a plant outside the jurisdiction of this State, it shall be deemed produced in the Illinois locality in which delivery of the printing ordered is required to be made. Where such printing is required to be delivered to more than one Illinois locality, such printing shall be deemed produced in the Illinois locality to which the largest dollar volume of printing under the contract is to be delivered.

- g) For janitorial cleaning, window washing, food and security guard services, location means the county in which the work is to be performed.

- h) Prevailing wages, benefits and conditions will be determined by the Director of the Illinois Department of Labor.

## SUBPART L: CONTRACT PRICING

**Section 1300.2800 All Costs Included**

Unless otherwise allowed by the solicitation, prices quoted shall be all inclusive covering transportation, transit insurance, delivery, installation, taxes, and any other costs.

## SUBPART N: REAL PROPERTY LEASES AND CAPITAL IMPROVEMENT LEASES

**Section 1300.4005 Real Property Leases and Capital Improvement Leases**

Real property leases and capital improvement leases shall be procured in accordance with Article 40 of the Code, this Part and 44 Ill. Adm. Code 5000. In the event of a conflict, 44 Ill. Adm. Code 5000 shall prevail.

**Section 1300.4010 Renewal**

The renewal or extension of leases in effect before July 1, 1998 shall be in accordance with Section 40-15 of the Code except that Section 40-15(b)(5)(ii) and (iii) shall not apply.

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## SUBPART O: PREFERENCES

## Section 1300.4505 Procurement Preferences

The procurement preferences identified in Article 45 of the Code must be considered in developing procurement documents, conducting evaluations and drafting contracts.

## Section 1300.4510 Resident Bidder Preference

- a) "Illinois resident vendor" as used in this Section means a person authorized to transact business in this State and having a bona fide establishment for transacting business within this State at which it was actually transacting business on the date when any competitive solicitation for a public contract was first advertised or announced, including a foreign corporation duly authorized to transact business in this State that has a bona fide establishment for transacting business within this State at which it was actually transacting business on the date when any competitive solicitation for a public contract is first advertised or announced.
- b) In breaking a tie, an Illinois resident vendor shall be given the award.
- c) An Illinois resident vendor who would perform the services or provide the supplies from another state shall be considered a resident of that other state as against an Illinois resident vendor who would perform the services or provide the supplies from Illinois, if that other state has an in-state preference.
- d) If an Illinois resident vendor produces or performs at least 51% of the goods or services in another state, that Illinois resident vendor shall be considered a resident of that other state for purposes of application of this reciprocal preference when evaluating the bid of an Illinois resident contractor that produces or performs at least 51% of the goods or services in Illinois.
- e) The CPO or SPO may refer to the list of states with in-state preference maintained by DCMS, which shall be considered in all procurements involving out-of-state vendors.

## Section 1300.4530 Correctional Industries

- a) The CPO or SPO shall refer to the listing maintained by DCMS of the goods or services available from the Department of Corrections that identifies those that must be purchased from Corrections.
- b) Those items that must be purchased from Corrections may not be procured from any other source without the express written authorization of the CPO.
- c) The CPO or SPO is authorized to procure from Corrections without seeking competition or giving public notice.

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## Section 1300.4535 Sheltered Workshops for the Disabled

- a) The CPO or SPO shall refer to information prepared by DCMS regarding qualified sheltered workshops and categories of goods and services set-aside to such sheltered workshops by DCMS. To the extent practicable, the OAG will follow such set-asides.
- b) Pricing Approval  
While notice and competition is not required prior to contracting with a sheltered workshop, prices must be reasonable. Whether a price is reasonable will be determined based upon current market prices, historical prices, prices received by other State agencies for similar goods or services, the policy of the Code to promote procurements from sheltered workshops, and other such relevant factors.

## Section 1300.4540 Gas Mileage

- a) Vehicle specifications shall require compliance with minimum gas mileage requirements established in Section 45-40 of the Code.
- b) Requests for exceptions must be approved by the CPO. Requests must fully describe the circumstances necessitating a non-compliant vehicle.
- c) No exception will be granted unless it is clear from the request that a non-compliant vehicle is necessary in order to carry out the functions of the OAG.

## Section 1300.4545 Small Business

- a) Set-Aside  
DCMS may determine categories of goods or service procurements that will be set-aside for small business. The CPO or SPO may contact DCMS to determine whether a particular procurement has been set-aside for small business, and if so, the OAG may honor the set-aside to the extent practicable.
- b) Small Business List  
The OAG may avail itself of the list of responsible vendors that meet the criteria of small business maintained by DCMS. A business that fits the definition of small on the day of bid or proposal opening will be considered small for the duration of the contract.
- c) Required Use  
If the CPO or SPO wishes to make a procurement covered by a set-aside designation, the solicitation must note responses are limited to those from responsible small businesses. Bids or proposals received from large businesses will be rejected as nonresponsive.
- d) Withdrawal of Set-Aside  
If the CPO or SPO determines that acceptance of the best bid or proposal will result in the payment of an unreasonable price, the CPO or SPO shall reject all bids or proposals and withdraw the designation of small business set-aside for the procurement in question. When a



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small business set-aside is withdrawn, notification shall be published in the Illinois Procurement Bulletin with an explanation. After withdrawal of the small business set-aside, the procurement shall be conducted in accordance with the limitations of the Code and this Part.

## e) Criteria for Small Business

Unless the CPO provides a definition for a particular procurement that reflects industrial characteristics, a small business is one:

- 1) Independently owned and operated.
- 2) Not dominant in its field of operations. This means the business does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining dominance, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.
- 3) With annual sales for most recently ended fiscal year no greater than:
  - A) \$7,500,000 for wholesale business;
  - B) \$3,000,000 for construction business; or
  - C) \$1,500,000 for retail business.
- 4) With no more than 250 employees if a manufacturing business.
  - A) A manufacturing business shall calculate how many people it employs by determining its average full-time equivalent employment, based on the number of persons employed on a full-time, part-time, temporary or other basis for its most recently ended fiscal year.
  - B) If a manufacturing business has been in existence for less than a full fiscal year, its average employment should be calculated for the period through one month prior to the bid or proposal due date.
- 5) If both a wholesaler and a retailer, the combined wholesale and retail annual sales for its most recently completed fiscal year may not exceed \$9,000,000. The retail component may not exceed \$1,500,000 and the wholesale component may not exceed \$7,500,000.
- 6) When computing the size status of a vendor, the number of employees and annual sales and receipts, as applicable, of the vendor and all affiliates shall be included. Concerns are affiliates when either one directly or indirectly controls or has the power to control the other, or when a third party or parties control or have the power to control both. In determining whether concerns are independently owned and operated and whether affiliation exists, consideration shall be given to all appropriate factors, including use of common facilities, common ownership and management and contractual arrangements. However, a franchise relationship shall not affect small business status

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if the franchise has the right to profit commensurate with ownership and bears the risk of loss or failure.

## SUBPART P: ETHICS

## Section 1300.5013 Conflicts of Interest

- a) An individual has a direct pecuniary interest in a contract when the individual is owed a payment in conjunction with performance of a contract, including, but not limited to, finder's fees and commission payments.
- b) Distributable income means the income to a company after payment of all expenses, including employee salary and bonus, and retained earnings, and the remaining amount is actually distributed to those entitled to receive a share of such income.
- c) This Section does not apply to contracts with licensed professionals provided such contracts are competitively bid. (For purposes of this Section, "bid" means procured pursuant to the competitive procedures identified in Subpart E of this Part.)

## Section 1300.5015 Negotiations for Future Employment

- a) An individual who performs services pursuant to a contract and who meets the requirements of an "employee" as opposed to an "independent contractor" is in a "continued contractual relationship" for the effective date of the contract until such time as the contract is terminated.
- b) An individual who performs services pursuant to a contract and who meets the requirements of an "independent contractor" as opposed to an "employee" is in a "continual contracted relationship" if the contract term is indefinite, is automatically renewed, is renewable at the individual's option, is renewable unless the OAG must act to terminate, or has a definite term of at least three months.

## Section 1300.5020 Exemptions

If the SPO finds a conflict of interest under Section 50-13 of the Code with the vendor selected for award or contract negotiations, the SPO shall forward to the CPO the name of the vendor and a description of the proposed contract and of the potential conflict, and shall state why an exemption should be granted. The CPO shall decide whether to refuse to allow a contract or to grant an exemption.

## Section 1300.5030 Revolving Door

- a) The CPO or SPOs shall identify designees in writing and shall maintain the designation for a period of at least two years following the end or revocation of the designation.

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- b) Those designees whose job or position descriptions are at least 51% directly related to State procurement are subject to this Section.

### Section 1300.5035 Disclosure of Financial Interests and Potential Conflicts of Interest

- a) Distributable income means the income of a company after payment of all expenses, including employee salary and bonus, and retained earnings, and the remaining amount is actually distributed to those entitled to receive a share of such income.
- b) Personal Services shall be any contract for services subject to the Code including, by way of example, professional and artistic services, repair services, cleaning and guard services.
- c) "Competitively bid" means a contract let pursuant to Section 20-10 of the Code.
- d) The CPO may prescribe forms for the disclosure of potential conflicts of interest and financial interests of bidders or offerors required under Section 50-35 of the Code.

## SUBPART Q: CONCESSIONS

### Section 1300.5310 Concessions

Proposed concessions or leases of State property under this provision of the Code must be coordinated with the Department of Central Management Services to ensure compliance with the State Property Control Act [30 ILCS 605] and rules implementing that Act.

## SUBPART R: COMPLAINTS, PROTESTS AND REMEDIES

### Section 1300.5510 Complaints Against Vendors

- a) Whenever a vendor fails to deliver on time or meet specifications, or for other similar causes, the OAG shall initiate a complaint to the vendor.
- b) For relatively minor infractions, the OAG may initiate contact by telephone or in person. If not resolved by this action, a written complaint will be made.
- c) If the initial complaint is not satisfactorily answered, or for serious infractions, the OAG will send a written complaint to the vendor detailing the problem.
- d) A copy of all written complaints shall be filed with the CPO. Information regarding the resolution of the complaint shall also be filed.

### Section 1300.5520 Suspension

- a) Application

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This Section applies to all debarments or suspensions of vendors from consideration for award of contracts.

- b) The CPO may suspend a vendor from doing business with the OAG, or for specific types of supplies or services. A suspension may be issued upon a showing the vendor violated the Code or this Part, or failed to conform to specifications or terms of delivery.
- c) When the CPO finds cause exists for suspension, a notice of suspension, including a copy of such determination, shall be sent to the suspended vendor. Bids or proposals will not be solicited from the suspended vendor, and, if they are received they will not be considered during the period of suspension.
- d) A contractor may be suspended for a period of time commensurate with the seriousness of the offense, but for no more than five years. The suspension will be effective within seven calendar days after receipt of notice unless an objection is filed. If an objection is filed, suspension would not become effective until the evaluation of the objection is completed.
- e) The CPO may debar a vendor. Debarment is the permanent suspension of a vendor from doing business with the OAG. A debarment may only take place in those instances involving bribery or attempted bribery of a State of Illinois officer or employee, or as otherwise allowed or required by law. Bids or proposals will not be solicited from the debarred vendor, and, if they are received they will not be considered during the period of debarment.
- f) The OAG shall maintain a master list of all suspensions and debarments. The master list will retain information concerning suspensions and debarments as public records. Such records will be maintained for a period of at least three years following the end of the suspension or debarment. Such public information may be considered in determining responsibility.

### Section 1300.5530 Settlement and Resolution of Contract and Breach of Contract Controversies

- a) Authority to Settle or Resolve Controversies  
The CPO or SPO who established the contract shall have authority to settle and resolve controversies but the Attorney General may set limits on such authority given to the SPO.
- b) Authority of Using Agency  
The OAG has the authority to accept delivery of goods or services in accordance with contract requirements as satisfactory adjustment of a complaint.
- c) Substitution of Terms/Price Reduction  
If the vendor proposes to make an adjustment by:
- 1) substituting an alternative specification, or
  - 2) reducing the contract price by a certain amount to compensate for some failure to provide full performance under the contract,
- such proposal must be referred to and approved by the CPO or SPO.

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## d) Cancellation for Breach of Contract

In any of the following cases the CPO or SPO shall have the right to terminate or rescind any contract entered into under this Part:

- 1) In the event the successful bidder fails to furnish a satisfactory performance bond within the time specified;
- 2) In the event the vendor fails to make delivery at the place or within the time specified in the contract or as ordered by the OAG;
- 3) In the event any goods or services provided under the contract are rejected (for example not meeting specifications, not conforming to sample, or not being in good condition when delivered) and are not promptly replaced by the vendor. If there are repeated rejections of the vendor's goods or services, this shall be grounds for termination or rescission, even though the vendor offers to replace the goods or services promptly;
- 4) In the event the vendor is guilty of misrepresentation (for example, misbranding of food or drugs) in connection with another contract for the sale of goods or services to the OAG such that he cannot reasonably be depended upon to fulfill his obligations as a responsible vendor under any of his contracts with the OAG;
- 5) In the event the vendor should be adjudged bankrupt, enter into a general assignment for the benefit of his creditors or receivership due to insolvency, disregard laws and ordinances, rules, or instructions of a contracting officer, or act in violation of any provision of the contract or this Part; or if the contract conflicts with any statutory or constitutional provision of the State of Illinois or of the United States; or
- 6) In the event of any other breach of contract or other unlawful act by the vendor.

## e) Cancellation for Fraud, Collusion, Illegality, Etc.

The OAG may cancel any contract it established if there is sufficient evidence to show that:

- 1) the contract was obtained by fraud, collusion, conspiracy, or other unlawful means; or
- 2) the contract conflicts with any statutory provision of the State of Illinois or of the United States.

## f) Withholding Money to Compensate State for Damages

If a contract is terminated or rescinded under this Section, the OAG may deduct from whatever is owed the vendor on that or any other contract an amount sufficient to compensate the State of Illinois for any damages suffered by it because of the vendor's breach of contract or other unlawful act on his part on which the cancellation is based.

## g) Damages

The damages for which the OAG may be compensated as provided in this Section or by a suit on the vendor's performance bond or by other legal remedy shall include, but are not limited to, the following:

- 1) the additional cost of goods or services bought elsewhere;

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## 2) cost of repeating the procurement procedure;

- 3) any expenses incurred because of delay in receipt of goods or services; and
- 4) any other damages caused by the vendor's breach of contract or unlawful act.

## Section 1300.5540 Violation of Law or Rule

- a) Determination that Solicitation or Award Violates Law  
If the CPO finds that the solicitation or proposed award is in violation of law or rule, the CPO may cancel the solicitation or proposed award, or make modifications to correct the violation, if such correction may be legally accomplished.
- b) Determination that Contract Violated Law or Rule  
Contracts based on awards or solicitations that were in violation of law or rule shall be terminated at no cost to the OAG.
- c) Effect of Declaring a Contract Null and Void  
In all cases where a contract is voided, the OAG shall endeavor to return those supplies delivered under the contract that have not been used or distributed. No further payments shall be made under the contract.

## Section 1300.5550 Protests

## a) Protest Resolution by CPO or SPO

An actual or prospective bidder, offeror, or contractor that may be aggrieved in connection with a procurement may file a protest on any phase of solicitation or award, including but not limited to specifications preparation, bid solicitation, or award.

## b) Complaints

Complainants should seek resolution of their complaints initially with the OAG. Such complaints may be made verbally or in writing.

## c) Filing of Protest

- 1) Protests shall be made in writing to the CPO or SPO, if applicable, and shall be filed within 14 days after the protester knows or should have known of the facts giving rise to the protest. A protest is considered filed when physically received by the CPO or SPO. Protests filed after the 14 day period shall not be considered. In regard to a protest regarding specifications, the protest must be received within 14 days after the date the solicitation was issued, and in any event must be received by the OAG at the designated address before the date for opening of bids or proposals.

- 2) To expedite handling of protests, the envelope should be labeled "Protest." The written protest shall include as a minimum the following:

- A) the name and address of the protester;
- B) appropriate identification of the procurement, and, if a



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contract has been awarded, its number;

- C) a statement of reasons for the protest; and
- D) supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated.

- d) Requested Information; Time for Filing  
Any additional information requested by the OAG shall be submitted within the time periods established by the requesting source in order to expedite consideration of the protest. Failure of the protesting party to comply expeditiously with a request for information by the CPO or the SPO may result in resolution of the protest without consideration of that information.

- e) Stay of Procurements During Protest  
When a protest has been timely filed and before an award has been made, the CPO or SPO shall make no award of the contract until the protest has been resolved, unless the CPO makes a written determination, after consulting with the SPO, that the award of the contract without delay is necessary to protect the interests of the State.

- f) Decision by the CPO or SPO  
Time for Decisions. A decision on a protest shall be made by the CPO or SPO as expeditiously as possible after receiving all relevant, requested information. If a protest is sustained, the available remedies include, but are not limited to, reversal of award and cancellation or revision of the solicitation.

- g) Effect of Judicial or Administrative Proceedings  
If an action concerning the protest has commenced in court, the CPO or SPO shall not act on the protest but shall refer the protest to the Chief of the General Law Bureau in the Office of the Attorney General.

## SUBPART S: SUPPLY MANAGEMENT AND DISPOSITIONS

## Section 1300.6010 Supply Management and Dispositions

- a) Inventory Management  
Supplies shall be ordered so as to maintain the minimum inventory commensurate with ability to meet agency needs. In no event shall more than a 12-month supply be maintained in inventory. This 12-month inventory does not apply to lifesaving medications, mechanical spare parts, or when a greater quantity is needed to meet minimum order quantities.
- b) Annual Inventory  
All warehouses and similar storage areas shall be inventoried at least annually.
- c) Report of Supplies  
The CPO shall be notified, at such times as that officer may prescribe, of all supplies in excess of 12-month supply.

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## SUBPART T: GOVERNMENTAL JOINT PURCHASING

## Section 1300.6500 General

In an effort to make the procurement process more efficient, the State and other governmental units may agree to utilize each other's procurement contracts. Agreements between State agencies with procurement authority and other governmental units with taxing authority are governed by this Part and the Governmental Joint Purchasing Act [30 ILCS 525].

## Section 1300.6510 OAG Use of Other Contracts

The OAG may utilize procurement contracts established by other authorized State agencies or units of government:

- a) if the contract:
  - 1) was established by sealed bid or sealed proposal; or
  - 2) is not required by the Illinois Procurement Code to be bid;
- b) if the price is reasonable;
- c) if an existing contract of the OAG would not be violated;
- d) if allowed by the vendor;
- e) if necessary State contract terms can be added; and
- f) if State legal requirements are otherwise followed.

## Section 1300.6520 No Agency Relationship

In any joint procurement situation, the agency establishing the contract does not become the procurement agency for the other. The ordering unit must issue its own purchase order, accept its own deliveries and make its own payments.

## SUBPART U: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

## Section 1300.7000 Severability

If any provision of this Part or any application thereof is held invalid, such invalidity shall not affect other provisions or applications of this Part that can be given effect without such invalid provision or application.

## Section 1300.7010 Government Furnished Property

If the OAG provides any property to the vendor in furtherance of the contract, such property shall remain the property of the State but may be consumed by the vendor if necessary to complete the contract. Vendor will issue a receipt for the property and will be responsible for its safekeeping and return of unused property to the State.

## Section 1300.7015 Inspections

- a) Inspection of Plant or Site

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The OAG may enter a contractor's or subcontractor's plant or place of business to:

- 1) inspect supplies or services for acceptance by the State pursuant to the terms of a contract;
- 2) audit the books and records of any contractor or subcontractor pursuant to record and audit provisions of this Part;
- 3) investigate an action to debar or suspend a person from consideration for award of contracts pursuant to the Illinois Procurement Code;
- 4) determine whether the standards of responsibility have been met or are capable of being met; and
- 5) determine if the contract is being performed in accordance with its terms.

## b) Inspection and Testing of Supplies and Services

1) Solicitation and Contractual Provisions. Contracts may provide that the OAG or its agent may inspect supplies and services at the contractor's or subcontractor's facility and perform tests to determine whether these supplies or services conform to solicitation requirements, or, after award, to contract requirements, and are therefore acceptable. Such inspections and tests shall be conducted in accordance with the terms of the solicitation and contract.

2) Procedures for Trial Use and Testing. The CPO may establish operational procedures governing the testing and trial use of equipment, material, and other supplies, and the application of resulting information and data to specifications or procurements.

## c) Conduct of Inspections

1) Inspectors. Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector other than the CPO or SPO may change any provision of the specifications or the contract without written authorization of the CPO or SPO. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirements of the contract.

2) Location. When an inspection is made in the plant or place of business of a contractor or subcontractor, such contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

3) Time. Inspection or testing of supplies and services performed at the plant or place of business of any contractor or subcontractor shall be performed at reasonable times.

## d) Inspection of Construction Projects

On-site inspection of construction shall be performed in accordance with the terms of the contract.

## Section 1300.7020 Records and Audits

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## a) Retention of Books and Records

Books and records that relate to performance of an OAG contract, including subcontracts, and that support amounts charged to the OAG shall be maintained:

- 1) by a contractor, for three years from the date of final payment under the prime contract;
- 2) by a subcontractor, for three years from the date of final payment under the subcontract; and
- 3) by a contractor and subcontractor for such large period of time as is necessary to complete any ongoing or announced audits.

## b) Contract Audit

Types of Contracts Audited. The type of contract under which books and records should be audited is that in which price is based on costs or is subject to adjustment based on costs, or that in which auditing would be appropriate to assure satisfactory performance, such as a time and materials contract. Situations where an audit may be warranted include but are not limited to when a question arises in connection with:

- 1) the financial condition, integrity, and reliability of the contractor or subcontractor;
- 2) any prior audit experience;
- 3) the adequacy of the contractor's or subcontractor's accounting system;
- 4) the number or nature of invoices or reimbursement vouchers submitted by the contractor or subcontractor for payment;
- 5) the use of federal assistance funds;
- 6) the fluctuation of market prices affecting the contract; or
- 7) any other situation when the CPO or SPO finds that such an audit is necessary for the protection of the State's best interest.

## Section 1300.7025 Written Determinations

## a) Preparation and Execution

Where the Illinois Procurement Code or this Part requires a written determination, the officer required to prepare the determination may delegate its preparation, but the responsibility for and the execution of the determination shall not be delegated.

## b) Content

Each written determination shall set out sufficient facts, circumstances, and reasoning as will substantiate the specific determination that is made.

## c) Obtaining Supporting Information

While an officer is responsible for the execution of the written determination, other State personnel, particularly technical personnel, are responsible for furnishing to the cognizant official, in an accurate and adequate fashion, the information pertinent to the determination. When requested, such information shall be furnished in writing to the cognizant official who shall have the authority to

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decide the final form and content of the determination and to resolve any questions or conflicts arising with respect to the determination.

## d) Forms

The CPO shall prescribe methods and operational procedures to be used in preparing written determinations.

## e) Retention

Each written determination shall be filed in the solicitation or contract file to which it applies, shall be retained as part of such file for so long as the file is required to be maintained, and, except as otherwise provided by law or rule, shall be open to public inspection.

## Section 1300.7030 No Waiver of Sovereign Immunity

Nothing in this Part shall be deemed to be a waiver of sovereign immunity.

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1) Heading of the Part: Minimum Standards for Licensure of Community Residential Alternatives2) Code Citation: 59 Ill. Adm. Code 1133) Section Numbers:Proposed Action:

113.10	Repealed
113.15	Repealed
113.20	Repealed
113.30	Repealed
113.40	Repealed
113.45	Repealed
113.50	Repealed
113.51	Repealed
113.55	Repealed
113.60	Repealed
113.70	Repealed
113.80	Repealed
113.90	Repealed
113.100	Repealed
113.110	Repealed
113.120	Repealed
113.130	Repealed
113.140	Repealed

4) Statutory Authority: Implementing and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104], Section 5 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/5] and Section 5 of the Community Residential Alternatives Licensing Act [210 ILCS 140/5].5) A Complete Description of the Subjects and Issues Involved: Part 113 is being repealed in response to the enactment of P.A. 90-423, approved and effective August 15, 1997. P.A. 90-423, which repealed the Community Residential Alternatives Licensing Act [210 ILCS 140], provides that all agencies previously regulated under 210 ILCS 140 shall be regulated under the Community-Integrated Living Arrangements Licensure and Certification Act [210 ILCS 135]. Agencies operating Community Residential Alternatives will now be regulated under the Department's rules at 59 Ill. Adm. Code 115.

Note: This rulemaking was recodified from the Department of Mental Health and Developmental Disabilities to the Department of Human Services at 21 Ill. Reg. 9321, effective July 1, 1997.

6) Will this rulemaking replace any emergency rulemaking currently in effect?  
No



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- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this rulemaking contain incorporations by reference? No
- 9) Are there any other proposed rulemakings pending on this Part? Yes

Section Numbers	Proposed Action	Illinois Register Citation
113.50	Amended	21 Ill. Reg. 6689
113.140	Repealed	21 Ill. Reg. 6689

Note: The Notice of Withdrawal of Proposed Amendments for this rulemaking appears elsewhere in this issue of the *Illinois Register*.

- 10) Statement of Statewide Policy Objectives: This rulemaking is not impacted by the State Mandates Act [30 ILCS 805].

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested person may submit comments, data, views or argument regarding this proposed rulemaking before the expiration of the first 45-day notice period. Submissions must be in writing and directed to:

Susan Weir  
 Chief, Bureau of Administrative Rules and Procedures  
 Department of Human Services  
 3rd Floor, Harris Building  
 Springfield, Illinois 62762  
 Telephone: (217)785-9772  
 FAX: (217)557-1547

- 12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Private agencies that operate community residential alternatives licensed by the Department.

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: No special skills needed.

- 13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: the Department did not anticipate that it would be proposing this rulemaking at the time either agenda was prepared.

The full text of the Proposed Repealer begins on the next page:

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TITLE 59: MENTAL HEALTH  
 CHAPTER I: DEPARTMENT OF HUMAN SERVICES

## PART 113

MINIMUM STANDARDS FOR LICENSURE OF  
 COMMUNITY RESIDENTIAL ALTERNATIVES  
 (REPEALED)

Section	Definitions
113.10	Incorporation by reference
113.15	Application for license
113.20	Complaint procedures
113.30	Departmental inspections
113.40	Monitoring and evaluation
113.45	Administrative policies and practices
113.50	Accreditation
113.51	Personnel and staffing policies
113.55	Site, physical plant standards
113.60	Physical plant services
113.70	Food and nutrition services
113.80	Admission/discharge
113.90	Resident rights
113.100	Resident records
113.110	Resident living program
113.120	Unusual occurrences
113.130	
113.140	

AUTHORITY: Implementing the Community Residential Alternatives Licensing Act [210 ILCS 140] and the Health Care Worker Background Check Act [225 ILCS 46] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104], Section 5 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/5] and and Section 5 of the Community Residential Alternatives Licensing Act [210 ILCS 140/5].

SOURCE: Emergency rule adopted and codified at 6 Ill. Reg. 7239, effective June 8, 1982, for a maximum of 150 days; emergency expired November 5, 1982; adopted at 7 Ill. Reg. 1054, effective January 19, 1983; amended at 17 Ill. Reg. 21387, effective November 29, 1993; amended at 21 Ill. Reg. 2200, effective February 1, 1997; amended at 21 Ill. Reg. 6076, effective May 5, 1997; amended at 21 Ill. Reg. 8312, effective June 25, 1997; recodified from the Department of Mental Health and Developmental Disabilities to the Department of Human Services at 21 Ill. Reg. 9321; repealed at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 113.10 Definitions

As used in the Community Residential Alternatives Licensing Act and

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this Part, unless the context otherwise requires, the terms defined in this Section have the meanings ascribed to them herein.

**"Abuse."** *Any physical injury, sexual abuse or mental injury inflicted on an individual other than by accidental means.* (Section 1-101.1 of the Code)

Physical injury includes all injuries serious enough to require immediate medical treatment by a physician, such as fractures and lacerations which require suturing and all other injuries which because of the circumstances or nature of the injury indicate possible abuse or neglect;

Sexual abuse includes but is not limited to any sexual penetration or sexual conduct between an individual and another person if the individual has been adjudicated legally disabled, or has a guardian, or is unable to understand the nature of the act or is unable to give knowing consent, or is injured, or alleges that there is, or there is evidence of use of force, coercion, or the exchange of money or anything of value; and

Mental injury includes use of words, signs, gestures or other actions by anyone against an individual which intimidates, demeans, harasses, causes emotional anguish or distress, ridicules, threatens, harms or will knowingly incite or precipitate maladaptive behavior on the part of an individual. Mental injury also includes exploitation, which is any act that uses individuals, their resources or their possessions for an agency employee's personal gain or for the agency's benefit.

**"Access."** The right to:

Enter any CRA;

Seek consent to communicate privately and without restriction with any resident;

Communicate privately and without restriction with any resident who consents to the communication;

Inspect the clinical and other records of a resident with the express written consent of the resident, and/or guardian, if appropriate;

Observe all areas of the CRA except the living area of any resident who protests the observation.

**"Accreditation."** A process establishing that a program complies with

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nationally recognized standards of care as set by one of the following:

1997 Hospital Accreditation Standards (Joint Commission on Accreditation of Healthcare Organizations (JCAHO), One Renaissance Boulevard, Oakbrook Terrace, Illinois 60181, 1996);

1997 Standards for Behavioral Health Care (Joint Commission on Accreditation of Healthcare Organizations (JCAHO), One Renaissance Boulevard, Oakbrook Terrace, Illinois 60181, 1996);

1996 Comprehensive Accreditation Manual for Health Care Networks (Joint Commission on Accreditation of Healthcare Organization (JCAHO), One Renaissance Boulevard, Oakbrook Terrace, Illinois 60181, 1996);

Council on Accreditation 1997 Standards for Behavioral Health Care Services and Community Support and Education Services (Council on Accreditation of Services for Families and Children (COA), 120 Wall Street, 11th Floor, New York, New York 10005, 1996);

Outcome Based Performance Measures (The Council, 100 West Road, Suite 406, Towson, Maryland 21204, 1993);

Standards Manual and Interpretive Guidelines for Behavioral Health (Commission on Accreditation of Rehabilitation Facilities (CARF), 4891 East Grant Road, Tucson, Arizona 85711, 1996);

Standards Manual and Interpretative Guidelines for Employment and Community Support Services (Commission on Accreditation of Rehabilitation Facilities (CARF), 4891 East Grant Road, Tucson, Arizona 85711, 1996); or

Education Standards (National Accreditation Council for Agencies Serving the Blind and Visually Handicapped, 15 West 65th Street, New York, New York 10023, 1994).

**"Act."** As used in this Part, the Community Residential Alternatives Licensing Act.

**"Activity program."** A specific planned program of varied group and individual activities geared to the individual resident's needs and available for a reasonable number of hours each day. Subgroups: e.g., leisure, recreation, religion, community, volunteers.

**"Adaptive behavior."** Standards of personal independence and social

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responsibility expected of the resident's age-appropriate and cultural group.

"Addition." Any construction attached to the original building which increases the area of cubic content of the building.

"Adult." A person 18 years of age or older. (Section 3 of the Act)

"Advocate." A person who represents the rights and interests of an individual as though they were the person's own, in order to realize the rights to which the individual is entitled, obtain needed services, and remove barriers to meeting the individual's needs.

"Agency." An organizational entity which coordinates the establishment and ongoing function of a community residential alternative.

"Alteration." Any construction change or modification of an existing building which does not increase the area or cubic content of the building.

"Ambulatory resident." A person who is physically and mentally capable of walking without assistance.

"Applicant." Any person, agency, association, corporation, partnership, or organization making application for a license. (Section 3 of the Act)

"Appropriate." A term used to indicate that a requirement is to be applied according to the needs of a particular individual or situation, and that that requirement is in substantial compliance.

"Appropriate programming." Programming which meets each resident's individual needs commensurate with his or her functioning level. (Section 3 of the Act)

"Assessment." The use of an objective system with which to evaluate the physical, social, developmental, behavioral, psychosocial, etc., aspects of a resident.

"Assistance." To give help to or aid.

"Audiologist." A person who is certified or is eligible for a Certification of Clinical Competence in audiology granted by the American Speech-Language-Hearing Association under its requirements in effect on the publication of this provision, or meets the educational requirements for certification, and is in the process of accumulating the supervised experience required for certification.

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"Autism." Autism is a developmental disability which is manifested by a combination of significant disturbances in intellectual, sensory, cognitive, social, physiological, and emotional functioning and is distinguished from other related disorders by: impaired or disordered language and communication; failure to develop appropriate social relationships; ritualistic or compulsive behaviors.

"Aversive stimuli." The use of means that are unpleasant, annoying, painful, potentially damaging to body tissue or that otherwise threaten the well being of the resident such as loud noises, electric shock, and chemical irritants.

"Behavior modification." Techniques to be used to change or revise current behavior patterns.

"Basement." When used in these standards, means any story or floor level below the main or street floor. When due to grade difference, there are two levels each qualifying as a street floor, a basement is any floor below the level of the two street floors. Basements shall not be counted in determining the height of a building in stories.

"Basic care." Provides a resident with support, care and assistance necessary for that person to maintain, preserve and enhance the individual's health condition, safety and self-preservation. Basic care services are intended to assist the resident to maintain and/or improve his or her physical and developmental condition.

"'C' rating." A technical classification system used to determine flame spread ranges of interior finishes by the National Fire Protection Association (NFPA) 101, Life Safety Code. A "C" rating is considered normal residential construction.

"Cerebral palsy." A disorder dating from birth or early infancy, non-progressive, characterized by examples of aberrations of motor function (paralysis, weakness, incoordination) and often other manifestations of organic brain damage such as sensory disorder, seizures, mental retardation, learning difficulty and behavior disorders.

"Code." The Mental Health and Developmental Disabilities Code [405 ILCS 5].

"Community residential alternative." A group home for eight or fewer individuals with developmental disabilities (adults) who are unable to live independently but are capable of community living if provided with an appropriate level of supervision, assistance and support services. A community residential alternative may provide training and guidance to residents in the skills of daily living and shall



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*provide opportunities for participation in community activities. A community residential alternative shall not be a medical or nursing facility. (Section 3 of the Act)*

"Complainant." Any person, community residential alternative resident, staff member, relative or governmental body that files a complaint with the Department against a community residential alternative.

"Concentration." The grouping or clustering of CRA's and/or other residential alternatives in a defined area which inhibits the meeting of resident's social and physical needs through the locally available community-neighborhood resources. (Certain restrictions may be imposed by the Department on CRA locations in order to maintain a normalized distribution of CRA's in a defined area.)

"Conversion." Converting a building for use as a CRA.

"Corridor." An interior passage which is part of an exit in that it provides access to an exit.

"Corporal punishment." Painful stimuli inflicted directly upon the body.

"CRA." Acronym for community residential alternative.

"Deemed status." If an agency has been accredited by an approved accrediting body as identified in the definition of "accreditation" in this Section, the Department shall deem the agency to be in substantial compliance with specific Sections of this Part. Deemed status, however, may be nullified by a finding by the Department that the agency is in substantial non-compliance with one or more of the designated Sections.

"Dentist." Any person licensed by the State of Illinois to practice dentistry, including persons holding a Temporary Certificate of Registration, as provided in the Illinois Dental Practice Act [225 ILCS 25].

"Department." The Department of Human Services.

"Developmental disability." Disability which is attributable to mental retardation, cerebral palsy, epilepsy or autism; or to any other condition which results in impairment similar to that caused by mental retardation and which requires services similar to those required by individuals with mental retardation. Such disability must originate before the age of 18 years, be expected to continue indefinitely, and constitute a substantial handicap. [405 ILCS

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5/1-106]

"Dietitian." A person who is eligible for registration by the American Dietetic Association; or has a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management; has one year of supervisory experience in the dietetic service of a health care institution, and participates annually in continuing dietetic education.

"Discharge." The full release of any resident from a CRA.

"Distinct part." An entire physically identifiable unit to be established within another structure. The Department does not permit licensure of a CRA within another entity licensed by either the Department of Children and Family Services or Public Health.

"Emergency." A situation, physical condition or one or more practices, methods or operations which present imminent danger of death or serious physical or mental harm to resident(s) of a CRA.

"Epilepsy." A condition when recurrent electrical discharges in the brain disturb the normal function of the nervous system. These episodes of disturbances are called seizures. Seizures can involve a temporary loss of consciousness or temporary changes in behavior. The exact changes of behavior depend on the area of the brain which is being stimulated by the electrical discharge.

"Evaluation report." A written report filed by a qualified surveyor from the Department based on the requirement of the Community Residential Alternatives Licensing Act and the standards promulgated thereunder.

"Financial responsibility." Sufficient assets to provide adequate services such as staff, heat, laundry, foods, supplies, and utilities for at least a two-month period of time.

"Goal." An expected result or condition that involves a specified period of time to achieve, that is specified in behavioral terms in a statement of relatively broad scope, and that provides guidance in establishing specific objectives directed toward its attainment.

"Governing body." The policy-making authority, whether an individual or a group, that exercises general direction over the affairs of a CRA and establishes policies concerning its operation and the welfare of the residents it serves.

"Guardian." A person appointed as a guardian of the person and/or estate under the Probate Act of 1975 [755 ILCS 5].

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"*Habilitation.*" An effort directed toward the alleviation of a developmental disability or toward increasing an individual's level of physical, mental, social or economic functioning, independence and self-respect. Habilitation may include, but is not limited to, diagnosis, evaluation, medical services, residential care, day care, special living arrangements, training, education, sheltered employment, protective services, counseling and other services through interaction and participation in the community. (Section 1-111 of the Code)

"Hall" or "hallway." An interior passage which provides access to a room or area from another room or area and is not part of an exit.

"Health care services." Assist the resident to maintain and/or improve his or her health and physical capabilities, such as helping the resident maintain a medication schedule, use a prosthetic or orthopedic device, plan a special diet, or reinforce an occupational or physical therapy service rendered to the resident.

"Hospitalization." The care and treatment of a resident in a hospital as an inpatient.

"Illinois Client Information System (ICIS)." A comprehensive assessment tool, used by the Department of Mental Health and Developmental Disabilities, which assembles behavioral and socio-demographic information and developmental progress, necessary for decision-making about residents' programs.

"Individual educational program (IEP)." A written statement for each resident that provides for specific education and related services. The IEP may be incorporated into the IHP. It must be an identifiable component, separate or as part of IHP.

"Individual habilitation plan (IHP)." A written plan as defined in Section 4-309 of the Code [405 ILCS 5/4-309]. (Section 3 of the Code)

"Interdisciplinary team." Each resident's interdisciplinary team is constituted of persons drawn from, or representing, the professions, disciplines, or service areas that are relevant to identifying the resident's needs and designing programs to meet them. At least one member of the team shall be a qualified mental retardation professional.

"License." Any of the following types of licenses issued to an applicant or licensee by the Department:

"Probationary license." A license issued to an applicant or licensee which has not held a license contiguous to its

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## application.

"Regular license." A license issued to an applicant or licensee which is in substantial compliance with the Act and this Part. (Section 3 of the Act)

"Licensee." A person, agency, association, corporation, partnership or organization which has been issued a license to operate a community residential alternative. (Section 3 of the Act)

"Licensed practical nurse." A person with a valid current Illinois license to practice as a practical nurse. (Illinois Nursing Act of 1987 [225 ILCS 65])

"Maladaptive behavior." Impairment in adaptive behavior as determined by clinical evaluation or psychological testing. Impaired adaptive behavior may be reflected in delayed maturation or reduced learning ability or inadequate social adjustment.

"Mentally retarded and mental retardation." Significantly subaverage general intellectual functioning which exists concurrently with impairment in adaptive behavior and which originates before the age of 18 years. (Section 1-116 of the Code)

"Misappropriation of property." Using a resident's cash, clothing, or other possessions without authorization by the resident or the resident's authorized representative; failure to return valuables after a resident's discharge; or failure to refund money after death or discharge when there is an unused balance in the resident's personal account.

"Mobile resident." Any resident who is not bedfast, but is able to move about either independently or with the aid of assistive devices such as walkers, crutches, wheelchairs, wheeled platforms, and so forth.

"Natural family." Parents (natural or adoptive), siblings, grandparents, aunts and/or uncles.

"Neglect." A failure in a community residential alternative to provide adequate medical or personal care or maintenance which failure results in physical or mental injury to a resident or in the deterioration of a resident's physical or mental condition. (Section 1-117.1 of the Code)

"New construction." A new building or addition to, or conversion of a building.

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"Normalization." The principle of helping residents to obtain an existence as close to normal as possible, by making available to them patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

"Nurse." A registered nurse or a licensed practical nurse as defined in the Illinois Nursing Act of 1987 [225 ILCS 65].

"Objective." An expected result or condition that involves a specified period of time to achieve, that is specified in behavioral terms, and that is related to the achievement goal.

"Occupational therapist, registered (OTR)." A person who is a graduate of an occupational therapy curriculum accredited jointly by the Council on Medical Education of the American Medical Association and the American Occupational Therapy Association; or is eligible for certification by the American Occupational Therapy Association.

"Occupational therapy assistant." A person who is eligible for certification as a Certified Occupational Therapy Assistant (COTA) by the American Occupational Therapy Association.

"Owner." *The individual, partnership, corporation, association or other person who owns a community residential alternative. In the event a community residential alternative is operated by a person who leases the physical plant, which is owned by another person, "owner" means the person who operates the community residential alternative, except that if the person who owns the physical plant is an affiliate of the person who operates the community residential alternative and has significant control over the day-to-day operations of the community residential alternative, the person who owns the physical plant shall incur jointly and severally with the owner all liabilities imposed on an owner under the Act. (Section 3 of the Act)*

"Pharmacist, registered." Any person who holds a certificate of registration as a registered pharmacist, a local registered pharmacist or a registered assistant pharmacist under the Pharmacy Practice Act of 1987 [225 ILCS 85].

"Physical therapist." A person licensed with the Department of Professional Regulation as a physical therapist under the Illinois Physical Therapy Act [225 ILCS 90], and has graduated from a physical therapy curriculum approved by the American Physical Therapy Association, or by the Council on Medical Education and Hospitals of the American Medical Association, or jointly by the Council on Medical Education of the American Medical Association and the American Physical Therapy Association.

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"Physical therapy assistant." A person who has graduated from a two-year college level program approved by the American Physical Therapy Association.

"Physician." Any person licensed by the State of Illinois to practice medicine in all its branches and includes any person holding a Temporary Certificate of Registration, as provided in the Medical Practice Act of 1987 [225 ILCS 60].

"Plan of Correction." *A written plan submitted to the Department for violation(s) of the Act or this part which are cited by the Department. The plan shall describe the steps that will be taken in order to bring the community residential alternative into compliance and the time-frame for completion of each step. (Section 3 of the Act)*

"Psychiatrist." A person, as defined under "Physician" in this Section, who is board eligible or board certified in psychiatry.

"Psychologist." A person licensed under the Clinical Psychologist Licensing Act [225 ILCS 15].

"Qualified mental retardation professional (QMRP)." A QMRP must: Have at least one year of experience working directly with individuals with mental retardation or other developmental disabilities and be one of the following:

A doctor of medicine or osteopathy licensed pursuant to the Medical Practice Act of 1987 [225 ILCS 60];

A registered nurse licensed pursuant to the Illinois Nursing Act of 1987 [225 ILCS 65];

An occupational therapist or occupational therapist assistant certified by the American Occupational Therapy Association or other comparable body (Illinois Occupational Therapy Practice Act [225 ILCS 75]);

A physical therapist certified by the American Physical Therapy Association or other comparable body (Illinois Physical Therapy Act [225 ILCS 90]);

A physical therapist assistant registered by the American Physical Therapy Association or a graduate of a two-year college-level program approved by the American Physical Therapy Association or comparable body;

A psychologist with at least a master's degree in psychology from an accredited school (Clinical Psychologist Licensing Act [225



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ILCS 15));

A social worker with a bachelor's degree from a college or university or graduate degree from a school of social work accredited or approved by the Council on Social Work Education or another comparable body (the Clinical Social Work and Social Work Practice Act [225 ILCS 10]);

A speech-language pathologist or audiologist with a certificate of Clinical Competence in Speech-Language Pathology or Audiology granted by the American Speech Language Hearing Association or comparable body or meeting the education requirements for licensure and being in the process of accumulating the supervised experience required for licensure (the Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110]);

A professional recreation staff person with a bachelor's degree in recreation or in a specialty area such as art, dance, music or physical therapy;

A professional dietitian registered by the American Dietetics Association; or

A human services professional with a bachelor's degree in a human services field, including but not limited to sociology, special education, rehabilitation counseling and psychology.

*"Qualified surveyor."* Any individual or any governmental agency designated by the Department to survey community residential alternatives for compliance with the Act and this Part. (Section 3 of the Act) Any individual designated as an agent of the Department's Quality Assurance Unit and who has successfully completed the Department's quality assurance training program for surveyors and possesses a baccalaureate degree with at least one year of paid working experience with the developmentally disabled. All qualified surveyors employed by the Department after December 1, 1993, shall meet this requirement.

*"Reasonable visiting."* Any time which does not interfere with normal sleeping hours or scheduled programming.

*"Registered nurse."* A person with a valid current Illinois registration to practice as a registered professional nurse.

*"Renovate."* Remodel by restoring, reconditioning or rehabilitating a structure for use as a CRA.

*"Reputable moral character."* Having no history of a conviction of the

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applicant, or if the applicant is a firm, partnership, or association, or any of its members, or of a corporation, or any of its officers, or directors, or of the person designated to manage or supervise the community residential alternative, or a felony, or of two or more misdemeanors involving moral turpitude, as shown by a certified copy of the record of the court of conviction, or in the case of the conviction of a misdemeanor by a court not of record, as shown by other evidence; or other satisfactory evidence that the moral character of the applicant, or manager, or supervisor of the community residential alternative is not reputable.

*"Resident."* An individual residing in a community residential alternative pursuant to the Act (Section 3 of the Act), and receiving services in a CRA.

*"Resident living coordinator."* A staff member who is at least 21 years of age is ultimately responsible for the day to day operation of the CRA and delivery of programs required to meet the needs of the residents.

*"Restraint."* Direct restriction through mechanical means or personal physical force of the limbs, head or body of a recipient or client, except as part of a medically prescribed procedure for the treatment of an existing physical disorder or the amelioration of a physical handicap. The partial or total immobilization of a recipient or client for the purpose of performing a medical/surgical procedure shall not constitute restraint. (Section 1-125 of the Code)

*"Safety device."* Any equipment or protective devices as prescribed which prevent the residents from falling or otherwise injuring themselves.

*"Seclusion."* The sequestration by placement of a recipient or client alone in a room from which he or she has no means of leaving. When a recipient or client is placed in a behavior modification program pursuant to his or her individual services plan, he or she may be restricted to a given area or room for a reasonable period of time and such restriction shall not constitute seclusion. (Section 1-126 of the Code)

*"Secretary."* The Secretary of the Department of Human Services or his or her designee.

*"Self-care services."* Helps the resident perform daily living activities and personal hygiene functions such as toileting, bathing, grooming, and feeding.

*"Speech-language pathologist."* A person who is certified or is

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eligible for a Certification of Clinical Competence in speech-language pathology granted by the American Speech-Language-Hearing Association under its requirements in effect on the publication of this Part, or meets the educational requirements for certification, and is in the process of accumulating the supervised experience required for certification.

"Social worker, qualified." A person who:

Is licensed by the State of Illinois (registered or certified by the Illinois Department of Professional Regulation); and

Is a graduate of a school of social work which has been approved by the Council on Social Work Education (some schools are approved for bachelor's degree programs and others for master's degree); and

Has one year of social work experience in a health care setting

"State Fire Marshal." The fire marshal of the Office of the State Fire Marshal, Division of Fire Prevention.

"Stockholder of a corporation." Any person who, directly or indirectly, beneficially owns, holds or has the power to vote, at least 5% of any class of securities issued by the corporation.

"Story." That portion of a building between the upper surface of any floor and the upper surface of the floor above except that the topmost story shall be the portion of a building between the upper surface of the topmost floor and the upper surface of the roof above.

"Substantial compliance." An operation composed of a residential component and a program component, which after being surveyed does not have a deficiency, or a group of deficiencies, that taken individually or as a group, jeopardizes those resident's health, welfare and safety. Each deficiency would also be supported by a plan of correction or equivalency that has been approved by the Department.

"Substantially handicapped." A physical or mental disability, resulting from mental retardation, cerebral palsy, epilepsy, or autism, of such severity that alone, or in connection with social, legal or economic constraints, it requires the provision of specialized services over an extended period of time directed toward the resident's social, personal, physical or economic habilitation or rehabilitation.

"Support services." Those services provided to residents in order to facilitate their integration into the community and to improve their

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level of functioning, independence and self-respect.

"Therapeutic recreation specialist." A person who is eligible for registration as a therapeutic recreation specialist by the National Therapeutic Recreation Society (branch of the National Recreation and Park Association) under its requirements in effect as of January 19, 1983.

"Title XX eligibility." Under the block grant legislation service eligibility is based on client characteristics and the need for the service rather than categorical or income eligibility. (45 CFR 96, Subpart G, 1996)

"Transfer." A change in status of a resident's living arrangements from one community residential alternative to another residential alternative.

"Valid license." A license which is unsuspended, unrevoked and unexpired.

(Source: Amended at 21 Ill. Reg. 8312, effective June 25, 1997)

## Section 113.15 Incorporation by reference

Any rules of an agency of the United States or of a nationally-recognized organization or association that are incorporated by reference in this Part are incorporated as of the date specified and do not include any later amendments or editions.

(Source: Added at 17 Ill. Reg. 21387, effective November 29, 1993)

## Section 113.20 Application for license

## a) General requirements

1) All community residential alternatives shall be licensed by the Department.

2) As a condition of the issuance or renewal of a license, the applicant or licensee shall file a statement of ownership, which shall be public information and which shall be available from the Department. The statement of ownership shall include: the name, address, telephone number, occupation, or business activity, business address and business telephone number of the person who is the owner of the community residential alternative and every person who owns the building in which the community residential alternative is located, if other than the owner of the community residential alternative; the name of every partner and stockholder of the owner if the owner is a partnership or corporation; and, the address of any facility, wherever located,

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any financial interest in which is owned by the applicant, or licensee, if the facility were required to be licensed if it were located in this State

- 3) Application for a license shall be made on forms provided and in the manner prescribed by the Department. (Section 7 of the Act)
- 4) These minimum standards apply to the operator/licensee of CRA, that are to be licensed and classified to provide community residential alternatives.

## b) Agency eligibility.

Eligibility will be evaluated according to a brief narrative describing the proposed program and the following criteria:

- 1) Possess programming and services capacity for developmentally disabled persons.
- 2) Possess the ability to monitor individual's development.
- 3) Possess individual habilitation planning capacity.
- 4) Possess a commitment toward developing services for developmentally disabled persons and continued involvement of their natural families.
- 5) Have staff with appropriate degrees, experience and training in developmental disabilities enabling them to establish a CRA.
- 6) Agree with the Department to allow accessibility to CRA sites for licensure inspections, surveys and monitoring.
- 7) Must be able to demonstrate financial responsibility to operate and maintain CRA which is planned, including any necessary financial commitments.
- 8) Must demonstrate ability to provide or arrange for provision of necessary support services to enable success of planned CRA.
- 9) Possess the ability to develop and provide staff training programs.

## c) Licensee

- 1) The licensee is the corporate body, individual or individuals responsible for the operation of the CRA and upon whom rests the responsibility for meeting the licensing requirements.
- 2) The licensee does not have to own the building being used.
- 3) If the licensee does not own the building, a rental agreement or lease between the licensee and the owner of the building is required. A copy of the lease or rental agreement shall be on file with the CRA provider.
- 4) If the licensee is not a corporation each person responsible for the operation of the facility and upon whom rests the responsibility for meeting the licensing standards, shall be at least 21 years of age.
- 5) A licensee shall give 60 days notice prior to voluntarily closing a CRA (see subsection (k) of this Section).
- 6) The licensee issued shall designate the agency's name and address, the CRA's address, the classification by level of program authorized for that CRA, the number of residents authorized, the date the license was issued and the expiration date.

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- 7) The license is issued to a specific licensee and for a specific location.

- 8) The license and the valid current renewal certificate immediately becomes void and shall be returned to the Department when the CRA is sold, or leased; or when operation is moved to a new location; or when the licensee (if an individual) dies; or when the licensee (if a corporation or partnership) dissolves or terminates; or when the licensee (whatever the entity) ceases to exist.

## d) Issuance of an initial probationary license for a new CRA

- 1) Upon receipt and review of an application for a license and inspection of the CRA, the Department shall issue a probationary license if it finds:

A) The applicant is a person responsible and suitable to operate or to direct or participate in the operation of a CRA by virtue of financial capacity, appropriate business and professional experience.

B) The site is in substantial compliance with the Community Residential Alternatives Licensing Act and these standards.

- 2) The Department will issue a probationary license for six months from date of issuance. During the six months period of the probationary license, the Department shall conduct an investigation of the applicant 30 days prior to the expiration of the probationary license. The investigator shall determine whether or not the applicant complies, and if not, whether satisfactory progress is being made toward compliance.

- 3) If in substantial compliance, the probationary license will be replaced with a regular license. If not in compliance and satisfactory progress toward compliance is not being made, the Department will allow the probationary license to expire.

## e) Issuance of regular license

- 1) A regular license shall be valid for a one-year period from the date of authorization. A license is not transferable.
- 2) Within 120 to 150 days prior to the date of expiration of the license, the licensee shall apply to the Department for renewal of the license. The procedure for renewing a valid license for a community residential alternative shall be the same as for applying for the initial licensee, pursuant to subsections (1) through (4) of Section 7 of the Community Residential Alternatives Licensing Act. If the Department has determined on the basis of available documentation that the community residential alternative is in substantial compliance with this Act and the rules promulgated under this Act, it shall renew the regular license for another one-year period. (Section 9 of the Act)

## f) Issuance of a renewal license

At least 120 days, but no more than 150 days, prior to the license expiration, the licensee shall submit an application for renewal of



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the license in such form and containing such information as the Department requires. If the application is approved and the CRA is in substantial compliance with all other licensure requirements, the license shall be renewed for an additional one-year period.

- g) Issuance of a probationary license due to a change of ownership
  - 1) *Whenever ownership of a community residential alternative is transferred from the licensee to any other person, agency, association, corporation, partnership, or organization, the transferee must obtain a new probationary license. The transferee shall notify the Department of the transfer and apply for a new license at least 30 days prior to final transfer. The requirement for an on-site inspection in Section 7 of the Community Residential Alternatives Licensing Act may be waived if the Department has conducted a survey of the community residential alternative within the past 60 days and the survey disclosed substantial compliance with the Act and rules promulgated hereunder. (Section 9(3) of the Act)*
  - 2) The transferor shall remain responsible for the operation of the CRA until such time as the license is issued to the new transferee.
  - 3) The probationary license granted to the transferee shall be subject to any plan of correction submitted by the previous owner and approved by the Department and any conditions contained in a probational license issued to the previous owner.
  - 4) The Department may be requested to provide the most recent inspection reports and conduct an on-site inspection of the community residential alternative prior to ownership transfer completion.
  - 5) The Department will issue a probationary license for a period of six months following an inspection, if required, as stated in subsection d, above.
  - 6) If in substantial compliance, the probationary license will be replaced with a regular license. If not in substantial compliance and satisfactory progress towards compliance is not being made, the Department will allow the probationary license to expire.
- h) *Licensing corrective action*

Grounds for denial or revocation of a license. The Department may deny or begin proceedings to revoke a license if the applicant or licensee has been convicted of a felony or two or more misdemeanors involving moral turpitude, as shown by a certified copy of the court of conviction; if the Department determines after investigation that such person has not been sufficiently rehabilitated to warrant the public trust; or upon other satisfactory evidence that the moral character of the applicant or licensee is not reputable. In addition, the Department may deny or begin proceedings to revoke a license at any time if the licensee:

  - 1) Submits false information either on Department licensure forms or

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- during an inspection;
- 2) *Refuses to allow an inspection to occur;*
- 3) *Violates the Community Residential Alternatives Licensing Act or rules and regulations promulgated under the Act;*
- 4) *Violates the rights of its residents; or*
- 5) *Fails to submit or implement a plan of correction within the specified time period. (Section 11 of the Act)*
- i) *Revocation or denial of initial or renewal license procedures.*
  - 1) Immediately upon proposing the revocation of the license or the denial of any application for a license under this subsection, the Department shall notify the applicant in writing.
  - 2) Notice of the proposed revocation or denial shall include a clear and concise statement of the violations of Section 12 of the Community Residential Alternatives Licensing Act on which the proposed revocation or denial is based and notice of the opportunity for a hearing under Section 12 of this Act.
  - 3) If the applicant desires to contest the proposed revocation or denial of the license, it shall provide written notice to the Department of a request for a hearing within fifteen days after receipt of the notice of proposed revocation or denial.
  - 4) The Department shall commence the hearing under Section 12 of the Community Residential Alternatives Licensing Act.
  - 5) Revocation or denial is effective upon receipt by the licensee of the Department's final administrative order or unless otherwise ordered by the Court under Section 12 of the Community Residential Alternatives Licensing Act.
- j) *Grounds for immediate closure*

Any situation that exists at a community residential alternative which may result in serious mental, psychological or physical harm to residents shall be abated or eliminated immediately. If the Department determines that such a situation exists and that proper measures to remedy the situation are not being taken, it shall immediately issue an order of closure and withdraw the residents and place them in another residential setting prior to a hearing. At the time of such action, the Department shall begin license revocation proceedings, and the licensee shall retain the right to a hearing as described in Section 12, Community Residential Alternatives Licensing Act. (Section 13 of the Act)
- k) *Closure of a community residential alternative*
  - 1) If, at any time, a licensee determines that he or she will terminate the operation of a community residential alternative which is licensed pursuant to the Community Residential Alternatives Licensing Act, he or she shall notify the Department of this decision at least 60 days prior to the date of closure. (Section 14(1) of the Act) The licensee shall make every effort to find another qualified agency to operate the CRA.
  - 2) When the Department is notified of a pending closure of a community residential alternative, it shall immediately begin

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identifying other appropriate residential settings. The Department shall review these options with the residents and their families before making a placement decision. (Section 14(2) of the Act)

- 3) Such notice shall be given to the Department, to any resident who must be transferred or discharged, to the resident's guardian and to a member of the resident's family, where applicable.
- 4) Notice shall state the proposed date of closing and the reason for closing.
- 5) The CRA shall offer to assist the resident in securing an alternative placement and shall advise the resident on available alternatives.
- 6) When the resident is unable to choose an alternative placement, the Department shall be notified of the need for relocation assistance.
- 7) The CRA shall comply with all applicable laws and regulations and standards until the date of closing, including those related to the transfer or discharge of residents.
- 8) The Department and agency shall be responsible for plans to insure appropriate care of residents prior to and following closure of a CRA.

## 1) Operation without a license

- 1) Any person, agency, association, corporation, partnership, or organization which operates a community residential alternative without a valid license from the Department is guilty of a business offense and shall be fined an amount in excess of \$500 but not exceeding \$10,000, and each day of violation is a separate violation. If the Department determines that a community residential alternative is operating without a valid license, it shall report the results of its investigation to the Attorney General or to the appropriate State's Attorney for prosecution.

- 2) No State or federal funds which are appropriated by the General Assembly or which pass through the General Revenue or any special fund in the State Treasury shall be paid to a community residential alternative not having a license issued under the Act. (Section 6 of the Act)

## m) Injunction

The operation or maintenance of a community residential alternative in violation of the Act, or rules promulgated under the Community Residential Alternatives Licensing Act, is declared a public nuisance inimical to the public welfare. The Secretary in the name of the people of the State, through the Attorney General, or the State's Attorney of the county in which the facility is located, may in addition to other remedies herein provided, bring action for an injunction to restrain such violation or to enjoin the future operation or maintenance of any such community residential alternative. (Section 15 of the Act)

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## n) Right to hearing

- 1) No license may be denied or revoked unless the applicant or licensee is given written notice of the grounds for the Department's action. The applicant or licensee may appeal the Department's proposed action within 15 days after receipt of the Department's written notice by making written request to the Department for a hearing. Notice of the time, place, and nature of the hearing shall be given to the applicant or licensee not less than two weeks prior to the date of the hearing. The hearing shall proceed, and the notice shall be delivered, in accordance with the Illinois Administrative Procedure Act (5 ILCS 100). The Secretary may appoint a hearing examiner to preside at any administrative hearing under the Community Residential Alternatives Licensing Act.

- 2) If the applicant or licensee does not submit a request for a hearing as provided for in the Community Residential Alternatives Licensing Act, or if after conducting the hearing the Department determines that the license should not be issued or that the license should be revoked or denied, the Department shall issue an order to that effect. If the order is to revoke the license, it shall specify that the order takes effect upon receipt by the licensee, and that the community residential alternative shall not operate during the pendency of any proceeding for judicial review of the Department's decision, except under court order. (Section 12 of the Act)

## Section 113.30 Complaint procedures

- a) Any person, agency, association or governmental body may file a complaint with the Department alleging that a community residential alternative is in violation of the Community Residential Alternatives Licensing Act or this Part.
- b) The Department may conduct an investigation in order to determine if the community residential alternative is in compliance. If, based on the results of its investigation, the Department determines that the community residential alternative is not in compliance, it shall promptly serve a notice of violation on the licensee. Such notice of violation shall comply with the requirements described in subsection (2) of Section 8 of the Act. The Department may notify the complainant of its findings.
- c) The complaint, a copy of the complaint, or a record published, released or otherwise disclosed to the community residential alternative shall not disclose the name of the complainant unless the complainant consents in writing to the disclosure or the investigation results in a judicial proceeding, or unless disclosure is essential to the investigation.
- d) A licensee or its agents shall not transfer, discharge, evict, harass, dismiss, or retaliate against a resident or an employee or agent who



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*files a complaint under Section 10 of the Act or who testifies under Section 12 of the Act because of the complaint or testimony.*

- e) *Any person participating in good faith in the making of a complaint, or in the investigation of such a complaint shall not be deemed to have violated any privileged communication and shall have immunity from any liability, civil, criminal or that otherwise might result as a consequence of making such a complaint. The good faith of any person making a complaint or participating in the investigation of such a complaint shall be presumed. (Section 10 of the Act)*
- f) *Final administrative decisions shall be subject to judicial review exclusively as provided in the Administrative Review Law [735 ILCS 5/Art. III], except that any petition for judicial review of Department action under the Act shall be filed within 15 days after receipt of notice of the final agency determination.*
- g) *The term "administrative decision" has the meaning ascribed to it in Section 3-101 of the Administrative Review Law. The court may stay enforcement of the Department's final decision if a showing is made that there is a substantial probability that the party seeking review will prevail on the merits and will suffer irreparable harm if the stay is not granted, and that the facility will meet the requirements of the Act and the rules promulgated under the Act during such stay. (Section 12(3) of the Act)*
- h) *Hearings shall be conducted in accordance with the Department's rule at 59 Ill. Adm. Code 101.70, Conduct of hearings and appeals.*

(Source: Amended at 21 Ill. Reg. 2200, effective February 1, 1997)

## Section 113.40 Departmental inspections

- a) *The Department may inspect the records and premises of a community residential alternative whenever the Department determines appropriate. (Section 8(1) of the Act)*
- b) *Upon receipt of an application filed in proper order, the Department shall review the application and shall make an on site evaluation of the proposed community residential alternative. (Section 7(2) of the Act)*
- c) *The evaluation shall be conducted by a qualified surveyor representing the Department. (Section 7(3) of the Act)*
  - 1) *Inspections*
    - A) *All CRAs to which these standards apply are subject to surveys by properly identified personnel of the Department or by such other properly identified persons as the Department may designate.*
    - B) *Any applicant for a license, holder of a license or person representing the CRA shall afford the representative of the Department every reasonable opportunity for examining the records, the premises and obtaining information required in administration of the community residential alternative for*

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the purpose of but not limited to, licensing, inspections, complaint, investigation, routine monitoring, program evaluation, resident assessment, etc.

- C) *Any holder of a license or applicant for a license shall be deemed to have given consent to any authorized officer, employee or agent of the Department to enter and inspect the CRA in accordance with this subsection. Refusal to permit such entry or inspection shall constitute grounds for denial, non-renewal or revocation of a license as provided in Section 11 of the Community Residential Alternatives Licensing Act.*
- D) *Include observations and data on the physical plant, resident programming, staff training and conduct, financial status and any other information which the surveyor or the Department determine relevant to the operation of a community-residential alternative as compared to such requirements as are provided for in the Community Residential Alternatives Licensing Act and/or these standards.*
- E) *A report must be on file with the Department and made available to the licensee. Such report may be introduced as evidence during hearings or proceedings pursuant to this Act.*
- F) *If the Department determines that a community residential alternative is not in compliance with the Community Residential Alternatives Licensing Act or this Part, the Department shall promptly serve a notice of violation on the licensee. Each notice of violation shall be prepared in writing and shall specify the nature of the violation, the statutory provision or rule alleged to have been violated and the requirement that the licensee submit a plan of correction to the Department. The notice shall also inform the licensee of any other action which the Department might take pursuant to the Act and of his or her right to a hearing under subsection 1 of Section 12 of the Community Residential Alternatives Licensing Act. (Section 8(2) of the Act)*
- G) *The Department may request assistance or advice from other State and local governmental or private entities in the inspection process, including but not limited to the Department of Public Health and the State Fire Marshal.*
  - 2) *Monitoring resident funds*
    - If the agency has the responsibility for the management of funds for the individuals it serves, such funds shall be accounted for on an individual basis.

(Source: Amended at 17 Ill. Reg. 21387, effective November 29, 1993)



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**Section 113.45 Monitoring and evaluation**

The agency shall agree to participate in a monitoring and evaluation system as described in the contractual agreement between the Department and the agency.

- a) Evaluation methodologies
 

Agencies shall develop evaluation methodologies that address the issues of the effective and efficient use of program resources; for example, quality assurance, utilization review, and professional services review organization. The agency shall also provide documentation of the implementation of these evaluation methodologies and demonstrate how the information gained through evaluation efforts is used in the planning process. The Department shall review and provide consultation in this evaluation effort.
- b) Monitoring
 

Monitoring is the review of the agency's compliance with contractual obligations, applicable statutes and administrative rules and insuring that Departmental funds are spent appropriately for services as specified in the contractual agreement. Monitoring may include desk review and site review of agency performance.

(Source: Added at 17 Ill. Reg. 21387, effective November 29, 1993)

**Section 113.50 Administrative policies and practices**

## a) Governing body

- 1) Each agency which is owned or operated by any corporation, association, or unit of local government shall have a governing body in which is vested authority and responsibility for the organization, management, control, and operation of the agency and all programs, services, facilities and residences it administers.
- 2) Each agency shall have provisions for obtaining input from consumers and/or consumer representatives to the governing body.

## b) General program requirements

- 1) Agencies funded by the Department shall meet the following general program requirements for all funded services:

## 1) Service setting

Services shall be provided in the setting most appropriate to the needs of the individual. This may include the individual's home, the agency, or the community. All settings shall be used innovatively in order to reach the target populations.

## 2) Recordkeeping

- A) Cumulative case records including an individualized service plan shall be maintained for each individual.
- B) The individualized service plan shall state the goal(s) for each individual. The individual shall be afforded the opportunity and encouraged to participate in goal/objective selection. Goals/objectives shall include timeframes

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specified by the agency's professional staff, in consultation with the individual and relevant collaterals. "Individualized service plan", as used herein, refers to and is equivalent to "individual treatment plan" and "individual habilitation plan".

- 3) Behavior management and human rights review
 

Each agency is required to establish or ensure a process for the periodic review of behavior intervention and human rights issues involved in the individual's treatment and/or habilitation. Agencies required to have behavior intervention and human rights review policies and procedures under licensure or certification standards shall continue to comply with those standards.
- 4) Abuse and neglect
 

Each agency shall have and use a process for reporting and handling instances of abuse and neglect in accordance with applicable standards, regulations and laws.
- 5) Admission to programming
 

A) Agencies shall not discriminate in the admission to and provision of needed services to individuals on the basis of race, color, sex, religion, national origin, ancestry, or disability.

B) Admission policies and procedures shall be set forth in writing and be available for review.
- 6) Compliance with life safety standards and requirements
 

All program facilities shall be in compliance with applicable State licensure requirements and local ordinances with regard to fire, building, zoning, sanitation, health, and safety requirements.
- 7) Personnel requirements
 

A) A licensed physician (MD or DO) shall assume medical and legal responsibility for medical services offered in any program, including prescription of medications.

B) All services shall be provided by appropriately trained staff, operating under the supervision of qualified clinical professionals.
- 8) Mandated services
 

A) Mandated services shall be provided according to the requirements as stated in the Department's rules at 59 Ill. Adm. Code 125 (Recipient Discharge/Linkage/Aftercare).

B) The Department shall monitor the provision of mandated follow-up monitoring services as outlined in 59 Ill. Adm. Code 125.
- 9) Utilization review
 

Utilization review is the ongoing review of services delivered, their intensity and their duration, to determine adherence to generally accepted guidelines or standards regarding the individual's assessment, eligibility for service and appropriateness of services rendered. Agencies shall engage in a

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utilization review process for all program services.

- c) There shall be policies and procedures that address medications as follows:

- 1) All medications or treatments shall be specifically prescribed for the individual by a physician or dentist with the intent of the physician or dentist that it be taken by the individual under program oversight of the CRA staff.
- 2) The CRA as it exercises program oversight may, as needed, guide the individual resident in self-administration of medications or treatments as part of the training program for independent living if the resident is not capable of self-administration.
- 3) Prescription medications must be labeled with the individual's name, drug name, date dispensed and directions for when and how often the medication must be taken.
- 4) All medications and treatments taken by the individuals with developmental disabilities shall be recorded with date, time, dosage, and person exercising program oversight.
- d) There shall be policies and assurances that prohibit the use of seclusion or restraints in any manner.

(Source: Amended at 17 Ill. Reg. 21387, effective November 29, 1993)

## Section 113.51 Application for waiver of the prohibition against employment

- a) Hiring of direct care personnel

An agency shall not knowingly hire or retain any person after January 1, 1997 in a full-time, part-time or contractual direct care position if that person has been convicted of committing or attempting to commit one or more of the following offenses unless the applicant or employee obtains a waiver pursuant to subsections (i) through (l) of this Section (Section 25 of the Health Care Worker Background Check Act [225 ILCS 46/25]):

- 1) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1 through 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1 through 9-3.3]);
- 2) Kidnaping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5 and 10-7]);
- 3) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1 and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1 and 10-4]);
- 4) Assault, battery or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.2, 12-4.3, 12-4.4, 12-6 and 12-7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.2, 12-4.3, 12-4.4, 12-6 and 12-7]);
- 5) Sexual assault or abuse (Sections 12-13, 12-14, 12-15 and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-15 and

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12-16));

- 6) Predatory criminal sexual assault of a child (Section 12-14.1 of the Criminal Code of 1961 [720 ILCS 5/12-14.1]);
- 7) Abuse or gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19]);
- 8) Criminal neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21]);
- 9) Theft, financial exploitation of an elderly or disabled person, robbery or burglary (Sections 16-1, 16-1.3, 16A-3, 18-1, 18-2, 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/16-1, 16-1.3, 16A-3, 18-1, 18-2, 19-1 and 19-3]);
- 10) Criminal trespass (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4]);
- 11) Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1]);
- 12) Unlawful use of weapons or aggravated discharge of a firearm (Sections 24-1 and 24-1.2 of the Criminal Code of 1961 [720 ILCS 5/24-1 and 24-1.2]);
- 13) Manufacture, delivery or trafficking of cannabis (Sections 5, 5.1 and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1 and 9]);
- 14) Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substances Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407 and 407.1]).

b) Definitions

For the purposes of this Section, the following terms are defined:

"Applicant." A person seeking employment with an agency who has received a bona fide conditional offer of employment. (Section 15 of the Health Care Worker Background Check Act [225 ILCS 46/15])

"Conditional offer of employment." A bona fide offer of employment by an agency to an applicant, which is contingent on the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) through (14) of this Section. (Section 15 of the Health Care Worker Background Check Act [225 ILCS 46/15])

"Direct care." The provision of nursing assistance with meals, dressing, movement, bathing, or other personal needs of maintenance, or general supervision and oversight of the physical and mental well-being of an individual who is incapable of maintaining a private, independent residence or who is incapable of managing his or her person whether or not a guardian has been appointed for that individual. (Section 15 of the Health Care Worker Background Check Act [225 ILCS 46/15])

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"Initiate." The obtaining of the authorization for a record check from a student, applicant, or employee. The agency shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 or the Health Care Worker Background Check Act [225 ILCS 46/15])

"Nurse Aide Registry." The registry of nurse aides kept by the Department of Public Health pursuant to Section 3-206.01 of the Nursing Home Care Act [210 ILCS 45/3-206.01].

"UCIA" The Uniform Conviction Information Act [20 ILCS 2635].

## c) Nurse Aide Registry

For all applicants for nurse aide positions, the agency shall check the Nurse Aide Registry to determine the date of the applicant's last UCIA criminal history record check. If it has been more than one year since the records check, the agency must initiate or have initiated on its behalf a UCIA criminal history record check for the nurse aide. (Section 30(b) of the Health Care Worker Background Check Act [225 ILCS 46/30(b)])

## d) Conditional offers

Effective January 1, 1996, if the agency makes a conditional offer of employment to an applicant other than a nurse aide who is not exempt under subsection (m) of this Section for a direct care position, the agency shall initiate or have initiated on its behalf a UCIA criminal history record check. (Section 30(c) of the Health Care Worker Background Check Act [225 ILCS 46/30(c)])

## e) Initiation of UCIA criminal history record check

By January 1, 1997 the agency must initiate a UCIA criminal history record check for all direct care employees who were hired before January 1, 1996, who have not already had a UCIA criminal history record check and who are not exempt in accordance with subsection (m) of this Section. (Section 30 of the Health Care Worker Background Check Act [225 ILCS 46/30])

## f) Request for UCIA criminal history record check

The agency shall request the UCIA criminal history record check in accordance with the requirements of the Department of State Police. (See 20 Ill. Adm. Code 1265.) The agency shall notify the applicant or employee of the following whenever a non-fingerprint UCIA Criminal History Record search is made. (Section 30 of the Health Care Worker Background Check Act [225 ILCS 46/30]):

- 1) That the agency shall request or have requested on its behalf a UCIA criminal history record check pursuant to the Health Care Worker Background Check Act;
- 2) That the applicant or employee has a right to obtain a copy of the criminal records report, challenge the accuracy and completeness of the report and request a waiver in accordance with subsection (j)(1) of this Section;

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- 3) That the applicant, if hired conditionally, may be terminated if the criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) through (14) of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (h) of this Section or the employee receives a waiver pursuant to subsection (j)(1) of this Section;
- 4) That the applicant or employee cannot work in a direct care position while a waiver request is pending;
- 5) That the applicant, if not hired conditionally, shall not be hired if the criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) through (14) of this Section unless the applicant's record is cleared based on a fingerprint-based record check pursuant to subsection (h) of this Section or the employee receives a waiver pursuant to subsection (j)(1) of this Section;
- 6) That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) through (14) of this Section on a fingerprint-based records check pursuant to subsection (h) of this Section or the employee receives a waiver pursuant to subsection (j)(1) of this Section.
- g) Conditional employment
  - The agency may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act [225 ILCS 46/30(g)])
  - Request for fingerprint-based UCIA criminal records check
    - An applicant, employee, or nurse aide whose UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses enumerated in subsections (a)(1) through (14) of this Section may request that the agency commence a fingerprint-based UCIA criminal records check by submitting information in a form and manner prescribed by the Department of State Police (see 20 Ill. Adm. Code 1265) within 30 days after receipt of the criminal records report to validate identity and clear one's record. (Section 35 of the Health Care Worker Background Check Act [225 ILCS 46/35])
  - Eligibility for waiver
    - 1) An applicant, employee, or nurse aide may request a waiver of the prohibition against employment. (Section 40 of the Health Care Worker Background Check Act [225 ILCS 46/40])
    - 2) The Department may grant a waiver based on any mitigating circumstances, which may include but not be limited to:



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- A) The applicant's, employee's or nurse aide's age at the time that the crime was committed;
- B) The circumstances surrounding the crime;
- C) The length of time since the conviction;
- D) The applicant or employee's criminal history since the conviction;
- E) The applicant or employee's work history;
- F) The applicant or employee's current employment references;
- G) The applicant or employee's character references;
- H) Nurse Aide Registry records; and
- I) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents, recipients or clients. (Section 40(b) of the Health Care Worker Background Check Act [225 ILCS 46/40(b)])

## j) Application for waiver

- 1) If the applicant, employee or nurse aide wishes to request a waiver, the request shall be submitted within 5 calendar days after receipt of the criminal records report. A complete waiver request shall include the following:

- A) A statement specifying any mitigating circumstances (see subsection (i)(2) of this Section) the person believes are relevant to the employment in question; and

## B) Either:

- i) Information necessary for the Department to obtain a fingerprint-based UCIA criminal records check, including a suitable set of fingerprints, in a form and manner prescribed by the Department of State Police (see 20 Ill. Adm. Code 1265), the fee for such a check (which shall not exceed the actual cost of the check) and the findings of the required non fingerprint-based UCIA criminal records check conducted by the Department of State Police; or
- ii) The report of the results of the fingerprint-based UCIA criminal records check done pursuant to subsection (h) of this Section.

- 2) Agency staff may assist the applicant, employee or nurse aide in completing the application.

- 3) The waiver request shall be submitted to:

Office of Accreditation and Licensure  
Department of Human Services  
405 Stratton Building  
Springfield IL 62765

## k) Waiver decision

- 1) The waiver request shall be reviewed by a panel of Department

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staff. The Department shall return a decision to the applicant, employee, or nurse aide and the provider within 30 calendar days after receipt of the completed waiver request including receipt of a report from the State Police based on the fingerprint-based record check.

- 2) The agency is not obligated to hire or offer permanent employment to an applicant or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act [225 ILCS 46/40(f)])

- 3) The Department shall be immune from liability for any waivers granted. (Section 40(e) of the Health Care Worker Background Check Act [225 ILCS 46/40(e)])

## 1) Appeal of the decision

- 1) The applicant, employee, or nurse aide may request further review of his or her request for a waiver within 30 calendar days after the receipt of the Department's denial of the waiver.
- 2) The applicant, employee, or nurse aide may submit additional documentation of the mitigating circumstances.
- 3) The appeal shall be submitted to:

Office of the Secretary  
Department of Human Services  
401 Stratton Building  
Springfield IL 62765

- 4) The Secretary shall act on the appeal within 30 calendar days after receipt of the appeal and shall issue a final decision granting or denying the waiver request.

## m) This Section shall not apply to:

- 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law;

or

- 2) An individual employed or retained by the agency as defined by Section 15 of the Health Care Worker Background Check Act [225 ILCS 46/15] for whom a criminal background check is required by another law of this State. (Section 20 of the Health Care Worker Background Check Act [225 ILCS 46/20])

- n) The agency shall send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for an individual employed as a nurse aide within 10 working days after receipt of the results. (Section 30(b) of the Health Care Worker Background Check Act [225 ILCS 46/30(b)])

- o) The agency shall retain on file for a period of five years records of criminal records requests for all employees. The files shall be subject to inspection by the Department's Office of Accreditation and Licensure. The agency shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. A fine of \$500 may be imposed for

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*failure to maintain these records.* (Section 50 of the Health Care Worker Background Check Act [225 ILCS 46/50])

(Source: Added at 21 Ill. Reg. 6076, effective May 5, 1997)

## Section 113.55 Accreditation

- a) Agencies demonstrating current accreditation status under any of the standards of the accrediting organizations identified in the definition of "accreditation" in Section 113.10 of this Part shall be granted deemed status for the following Sections of this Part:

- 1) Section 113.50;
- 2) Section 113.60(a), (b), and (c)(2);
- 3) Section 113.80 (a) through (e);
- 4) Section 113.90;
- 5) Section 113.100;
- 6) Section 113.110(d) through (g) and (i);
- 7) Section 113.120; and
- 8) Section 113.130.

- b) Demonstration of current accreditation status shall be achieved by submission of a certificate of accreditation and the most recent accreditation report by the agency to the Department.

- c) If the agency's accreditation status changes for any reason, the agency shall notify the Department of that change within 30 days after the effective date of the change.

(Source: Amended at 21 Ill. Reg. 8312, effective June 25, 1997)

## Section 113.60 Personnel and staffing policies

- a) There shall be one individual designated as resident living coordinator who is ultimately responsible for the day to day operation of the CRA and delivery of programs required to meet the needs of the residents.

- b) The ratio of staff to residents shall be adequate to meet the needs of the resident and to carry out responsibilities defined in the Act and in these standards.

- c) The CRA shall employ personnel with special and appropriate skills or have formal agreements with other agencies or persons whereby services are made available to the CRA according to resident need.

- 1) Direct service staff shall receive training as a part of an orientation program. Staff without previous experience in direct service to individuals shall receive training prior to unsupervised responsibility for direct service. Direct service staff who have completed training in the below mentioned areas, as documented in their personnel records, shall not be required to repeat that training as part of their orientation.

- A) Cardiopulmonary resuscitation (CPR), Heimlich maneuver and

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first aid;

- B) Concepts of treatment, habilitation and rehabilitation including behavior management, normalization, age appropriateness and psycho-social rehabilitation depending on the needs of the individuals served or to be served;

- C) Safety, fire, and disaster procedures;

- D) Abuse, neglect and unusual incident prevention, handling and reporting;

- E) Individual rights in accordance with Chapter 2 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/Ch. 2] and maintaining confidentiality in accordance with the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110];

- F) The nature and structure of the individual integrated services plan;

- G) The type, dosage, characteristics and side effects of medications prescribed for individuals;

- H) Screening for involuntary muscular movement, which may be indicative of tardive dyskinesia;

- I) Development and implementation of an individual integrated services plan;

- J) Formal assessment instruments used and their role in the development of the services plan;

- K) Documentation and recordkeeping requirements with reference to the services plan; and

- L) Other training which relates specifically to the type of disability or treatment and intervention techniques being used specific to individuals living in community residential alternatives geared toward assisting staff execute objectives obtained in the services plans.

- 2) After completion of training specified in subsection (c)(1) of this Section, each direct service staff member shall participate in ongoing staff development activities as outlined in the agency's staff development plan.

(Source: Amended at 17 Ill. Reg. 21387, effective November 29, 1993)

## Section 113.70 Site, physical plant standards

- a) These standards shall apply to sites, structures or constructions and alterations, additions or renovations intended for use in or as a community residential alternative licensed under the Community Residential Alternatives Licensing Act.

- b) Certification

An agency shall provide to the Department's Quality Assurance Unit notarized certification that any structure to be used as a CRA is in accordance with the codes and standards contained in these standards or other applicable codes.

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- 1) For any existing residential buildings or residential buildings requiring only minor alterations or remodeling changes which do not affect the structural integrity of the building; change functional operations; affect fire safety; the following inspections for notarized certification must be performed and submitted to the Department for review and comment:
  - A) State Fire Marshal for fire safety.
  - B) Licensed electrician for electrical standards.
  - C) Licensed plumber for plumbing standards.
  - D) Heating and ventilating contractor for mechanical standards.
  - E) Department qualified surveyor for general building conditions; size and other requirements as specified in these standards.
- 2) For new construction for buildings not previously used for residential occupancy or for buildings requiring major alterations that affect the structural integrity; functional operation; fire safety; structurally changes the residential capacity of the previously licensed occupancy; including new construction, certification shall be executed by an architect registered by the State of Illinois.
- c) Codes. Each CRA shall comply with the applicable residential provisions of the following codes effective at the time of initial licensure:

Code or Standard	Agency
1) Illinois Plumbing License Act [225 ILCS 320]	Department of Public Health
2) Rules and Regulations for Food Service Sanitation (77 Ill. Adm. Code 750)	Department of Public Health
3) Rules and Regulations for Fire Prevention and Safety (Residential Occupancy) (41 Ill. Adm. Code 100)	Office of State Fire Marshal
4) National Fire Protection Association: NFPA 10-Standard for Portable Extinguishers 1980	National Fire Protection Association
5) NFPA 74 Household Fire Warning Equipment 1980	National Fire Protection Association
6) NFPA 220-Standard Types of Building Construction 1979	National Fire Protection Association

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- 7) NFPA 255-Test of Surface Burning Characteristics of Building Materials 1979
  - 8) NFPA 258-Measuring Smoke Generated by Solid Material (Construction) 1982
  - 9) Fire Resistance Index January 1982
  - 10) Building Material Index January 1982
  - 11) National Electrical Code NFPA 70 1981
  - 12) One and Two Family Dwelling Code. Third Edition, 1979
- d) Contract documents
- 1) Based on a review of the program narrative an architect, when required, registered in the State of Illinois shall prepare drawings and specifications for the construction of a CRA in accordance with these standards. The contract documents with the architect's seal shall be submitted to the Department for review and comment.
  - 2) For new structures or additions or major alterations to existing structures coming within the scope of these standards, design development drawings and specifications shall be made.
  - 3) Final working drawings and specifications shall be retained by the agency and a set submitted to the Department.
  - 4) Alternate methods of design development and construction may be acceptable, subject to the approval of the architect.
  - 5) For final approval to remain valid construction contracts must be signed within one year of the date of final approval.
  - 6) Any contract modifications which affect or change the function, design, or purpose, of a facility shall be submitted to the architect for approval prior to authorizing the modifications.
  - 7) The Department shall be notified at least 30 days before construction has been completed. The Department may complete a final inspection. Deficiencies noted during the final inspection must have an acceptable plan of correction filed or be completed before occupancy will be allowed.
  - 8) The drawings shall indicate in detail the assignment of all spaces, size of areas and rooms, the fixed equipment and the specifications.



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- 9) The plans shall be drawn at a scale sufficiently large to clearly present the proposed design.
- 10) The drawings shall include a plan of each floor including the basement or ground floor; plot plan showing topography, roads, parking areas, sidewalks, landscaping, etc.; elevation of all facades; sections throughout the structure; and schedule(s) of finishes.
- 11) Performance specifications shall provide a general description of the construction including finishes; acoustical material; floor covering; description of the electrical, heating and ventilating, plumbing and structural systems.

## e) Site

- 1) The site shall be selected taking into account geographical differences as jointly accepted by the provider of service and Department Quality Assurance personnel.
- 2) The site shall be located conveniently accessible to transportation, churches, shopping and other community resources.
- 3) It shall be located on well-maintained, all weather roads.
- 4) Each CRA site shall comply with all applicable zoning ordinances and be located on reasonably flat or rolling well-drained land that is not subject to flooding, and is reasonably free from sources of excessive noise, noxious or hazardous smoke or fumes and not in a deteriorated, unpleasant, or potentially hazardous area.
- 5) Each site shall be located in an appropriate residential area of the community or neighborhood.
- 6) Each CRA site shall be served by an approved water supply, sewage disposal and waste treatment system.
- 7) Each CRA site shall be located so as to meet local fire authorities requirements.
- 8) Each CRA site shall be located so as to enable residents to participate in community activities.
- 9) Community residential alternatives shall not be located within a distance of 600 feet, measured in any direction from another licensed mental health group care structure.
- 10) To avoid clustering or concentrating community residential alternatives' residents in multi-story structures (e.g., apartment buildings), establishment of CRAs in such structures shall be governed by a formula which provides that the maximum number of developmentally disabled residents permissible in such structures shall be obtained by multiplying the number of residents in such a structure by a factor to approximate the population density for developmentally disabled residents in the State. The factor shall be 0.03.
  - A) If the formula provides for less than eight developmentally disabled residents in a structure, additional developmentally disabled residents may be housed up to a maximum of eight in the CRA.

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- B) If the formula provides for more than eight developmentally disabled residents permissible in the structure, additional CRA(s) may be established.

## f) Structure

- 1) CRAs shall not be in a structural part of a long-term care facility or other institutional building licensed by the Illinois Departments of Children and Family Services or Public Health.
- 2) Each CRA shall have a maximum capacity of eight.
- 3) Structures shall be constructed of fire resistive, protected non-combustible, protected ordinary, one-third hour protected wood frame, heavy timber, or unprotected non-combustible construction.
- 4) All fire exit corridors shall be three feet in clear and unobstructed width.
- 5) Fire exit corridor walls have a "C" fire-resistive rating. Corridor walls may terminate at the underside of the ceiling.
- 6) CRAs shall be in a structure comparable in appearance with other housing in the community-neighborhood.
- 7) CRA structures shall have interior finishes and walls of "C" rating or better.
- g) Bath and toilet rooms
  - 1) Each tub or shower shall be in an individual room or enclosed from view of other bathroom fixtures.
  - 2) A bathroom shall be provided on each bedroom floor and shall include toilet, lavatory, and tub or shower. A toilet and lavatory shall be provided on other resident use floors excluding basements used only for laundry and/or storage. One bathroom shall be provided for each six residents.
  - 3) Toilet room in a basement shall not have a ceiling height of less than 6'8".
  - 4) Special assistance or devices for toileting and bathing shall be provided when required to meet the individual's habilitation plan.
- h) Bedrooms
  - 1) Each single bedroom used for a resident shall have at least 75 square feet of usable net floor area, not including any space taken up for closets, wardrobes, bathrooms and clearly definable entryway areas.
  - 2) Each multiple bedroom used for residents shall have for each resident housed in the room at least 55 square feet of usable floor area. Usable area does not include any space utilized for closets, wardrobes, bathrooms and clearly definable entryway areas. Maximum room capacity shall be two residents. There shall be a three foot minimum distance between beds.
  - 3) Entrance door to an apartment, suite or resident bedroom shall swing into the room.
  - 4) Each room used as a resident bedroom shall have at least one outside window, and a total window area to the outside equal to

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at least one-tenth the floor area of the room.

- 5) Each bedroom shall have adequate and satisfactory artificial light.
- 6) Each resident shall be provided with at least four square feet of closet or wardrobe space.
- 7) Each resident bedroom floor shall be no more than three feet below the adjacent ground level.
- 8) Below grade bedroom(s) shall maintain a dry and comfortable environment.
- 9) Traffic to and from any room shall not be through a resident's bedroom.
- l) Doors and windows
  - 1) Exit access doors and all doors used by the residents shall be functional.
  - 2) All toilet or bathroom and bedroom doors and hardware shall be designed to permit emergency access to the room. All locks shall be arranged to permit exit from the room by a simple operation without the use of a key.
  - 3) Exit doors leading directly to an exit corridor shall be a 20 minute labeled door.
  - 4) Doors in stairways shall be self-closing and self-latching.
  - 5) Doors and windows shall fit snugly and be weather tight, yet open and close easily.
- j) Exit facilities and subdivisions
  - 1) At least two exits, remote from each other, shall be provided for each floor used by residents. The second means of egress of buildings of three stories or less may be an operable window with easy off screen. A rope ladder, ladder or other assistance should be available in these facilities.
  - 2) Any basements used by residents for such purposes as recreation, group meetings, or laundry shall be provided with one acceptable means of exit.
  - 3) All corridors and passages to be used as a means of exit, or part of means of exit, shall not lead through any room or space used for a purpose that may obstruct free passage.
  - 4) Means of egress shall be so arranged that there are no dead end pockets, hallways, corridors, passageways, or courts which have a depth exceeding 20 feet.
  - 5) Bedrooms opening off of a kitchen shall be provided with an acceptable means of egress other than through the kitchen.
- k) Floors
 

Floors shall be smooth and finished so that they can be easily and properly cleaned and maintained.
- l) Kitchen
  - 1) Provide a residential kitchen properly located for efficient food service, and large enough to accommodate the equipment and personnel needed to prepare and serve properly the number of meals required. Alternative methods for food service may be

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- used.
- 2) Provide kitchen equipment in an arrangement for convenient operation, good sanitation, healthful working conditions and control of heat, noise and odors, if food service is provided.
  - 3) The walls and ceilings of all food handling rooms shall be finished with smooth, washable surfaces.
  - 4) Provide a domestic type dishwashing machine equipped with sanitizing features. In the absence of a domestic dishwasher, a three compartment sink equipped with drain boards must be provided. One compartment is for washing dishes and the others for rinsing and sanitizing. The compartment for sanitizing shall be sufficiently deep to allow complete submersion of all items washed.
  - 5) The agency shall provide written sanitation procedures which shall be used, commensurate with the food service provided.
  - m) Laundry, housekeeping and storage areas
    - 1) Provide a laundry area equipped with appropriate and satisfactory type equipment of a design to meet the needs of the residents unless alternative appropriate means are provided (laundry service, laundromat, etc.).
    - 2) Provide sufficient housekeeping storage space throughout the CRA as required to maintain a clean and sanitary environment.
    - 3) When storage space is provided for excess personal possessions of residents and staff, linens, supplies, activity materials and other items, this area must be in a fire safe area or provided with a smoke detector. This does not include closets or wardrobes in residents' rooms.
    - 4) Provide storage room for maintenance supplies, yard equipment, etc. Equipment with gasoline engines and gas storage cans must be kept in an outside storage area. This equipment may be kept in a garage if garage is separated by one hour construction.
  - n) Social activity and dining area(s)
    - 1) There shall be a social activity area which will include 20 square feet per resident exclusive of bedrooms. A family room may be provided.
    - 2) The social activity area shall have adequate ventilation and natural illumination for the activities performed.
    - 3) There shall be a dining area with sufficient area to properly and comfortably seat the residents it serves.
  - o) Walls and ceilings
    - 1) All rooms occupied or used by residents shall have ceilings not less than seven feet in height.
    - 2) Any overhead projection located in the path of traffic shall not be less than six feet eight inches above the floor.
  - p) Electrical systems
    - 1) All material including equipment, shall be installed to provide an adequate electrical system with the necessary characteristics and capacity to supply the electrical facilities required by

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these standards and local codes. All materials shall be listed as complying with available nationally recognized standards.

- 2) All electrical systems and appliances shall be installed and maintained in accordance with the National Electrical Code NFPA 70 1981, as applied to residential occupancy.
- 3) All spaces occupied by people, machinery, and equipment within buildings, approaches to and exits from buildings shall have lighting.
- 4) Residents' rooms shall have general lighting. At least one light fixture shall be switched at the entrance in residents' rooms.
- 5) There shall be a minimum of two duplex type receptacles in each bedroom, appropriately located.
- 6) Resident bathrooms shall have a minimum of one duplex receptacle.
- 7) At least one duplex receptacle shall be installed in all hallways which are ten feet or longer in length.

## q) Fire protection system

- 1) An approved smoke detection system shall be installed on each floor level of multi-story facilities and outside each sleeping area in all facilities in accordance with NFPA 74, 1980.
- 2) The CRA must have written and posted fire procedures designating specific staff who are responsible for calling the fire department in case of a fire. All staff and residents shall be instructed in proper fire safety and prevention behavior using exit drills in the home (EDITH). The EDITH program is available through the Office of the State Fire Marshal.

- 3) The Department, and the Fire Prevention Division of the Office of the State Fire Marshal, will make inspections for fire safety and compliance with these standards. The Fire Prevention Division shall call to the attention of the Department any violations of these standards pertaining to fire protection found during a requested inspection. The Department, or upon request, the Fire Prevention Division, shall be privileged to make as many subsequent visits as deemed necessary by the Department for assurance of compliance.

- 4) There shall be at least one approved 5 lbs. ABC fire extinguisher in all basements and kitchens. They shall be inspected annually and recharged when necessary. The date of checking and recharging shall be recorded on a tag attached to the extinguisher. Staff shall be trained in their use.

- 5) Containers for rubbish and trash shall be of either metal with metal covers or approved plastic with fire resistance rating listing stamped on the container.

- 6) Housekeeping throughout the building, including basements, attics and unoccupied rooms shall be adequately performed to minimize fire hazards.

## r) Mechanical systems

- 1) Mechanical systems shall be tested, balanced, and operated to demonstrate that the installation and performance of these

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systems conform to the requirements of these standards.

- 2) The owner shall be provided with instructions in the operational use of the systems and equipment as required.

- 3) A design temperature of 70° Fahrenheit for winter conditions shall be provided.

## s) Plumbing systems

- 1) The number of water closets, lavatories, bathtubs, showers and other fixtures shall be as required by these standards.
- 2) Shower bases and tub bottoms shall be provided with non-slip surfaces.

- 3) Water supply systems shall be designed to supply water at sufficient pressure and volume to operate all fixtures and equipment during maximum demand periods.

- 4) Hot water distribution systems shall be arranged to provide hot water at each hot water outlet at all times. Hot water at shower, bathing and handwashing facilities shall not exceed 110° F.

- 5) Drainage piping shall not be installed in an exposed location in food preparation centers, food serving facilities, food storage areas, and other critical areas. Special precautions shall be taken to protect these areas from possible leakage or condensation from necessary overhead piping systems.

## Section 113.80 Physical plant services

## a) Maintenance. Every CRA shall:

- 1) Maintain its grounds in a safe, sanitary condition and its building in good repair and free of the following: cracks in floors, walls or ceilings; peeling wallpaper or paint; warped or loose boards; warped, broken, loose or cracked floor covering, such as tile or linoleum; loose handrails or railings; loose or broken window panes; and any other similar hazards, both interior and exterior as needed to keep it attractive, clean and safe; and free of insects and rodents.

- 2) Screen windows and doors.
- 3) Regularly inspect and maintain all electrical, plumbing, mechanical, water supply, heating, fire protection and sewage disposal systems, fixtures, piping and appliances in a safe and functioning condition.

- 4) Maintain all furniture and furnishings in a clean, attractive and safely repaired condition.

## b) Housekeeping

- 1) Keep attics, basements, stairways and similar areas free of accumulations of refuse, discarded furniture, old newspapers, boxes, discarded equipment and other items.

- 2) Not use bathtubs, shower stalls and/or lavatories for laundering, janitorial or food storage purposes.

- 3) Keep potentially hazardous compounds or solutions, such as



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cleaning compounds and insecticides, in a segregated space outside of food preparation or food storage areas and bathrooms.

## c) Laundry

1) Every facility shall have an effective means of supplying an adequate amount of clean linen for operation, either through an in-house laundry, a contract with an outside service or other appropriate means.

2) If an in-house laundry service is provided, the following conditions shall exist:

A) The laundry area shall be maintained and operated in a clean, safe and sanitary manner.

B) The linen shall be handled, transported and stored in a manner that protects the laundry of residents and live-in personnel.

C) The laundry and its accessory storage and handling area shall not be used as a storage area for supplies not directly connected with the operation of the laundry.

D) Laundry facilities shall not be located in rooms used for food storage, preparation or serving.

## d) Furnishings, equipment and supplies

1) Each resident shall be provided with a bed, springs in good repair, and a clean, firm, mattress. Cots, roll-a-ways and folding beds shall not be used.

2) Each bed shall be provided with clean linen and bedding in good condition.

3) Each bedroom shall be provided with a mirror and dresser. Each lavatory shall be provided with a mirror.

4) Each bedroom shall have window shades, or equivalent, in good repair.

5) Adequate illumination shall be provided in each room for reading.

6) Each living and/or multi-purpose room for residents' use shall be provided with an adequate number of reading lamps, tables and chairs or settees. These furnishings shall be well-constructed and of satisfactory design for the residents.

7) Program supplies shall be provided to maintain on-going programs and to meet the varied interests and needs of the residents.

8) There shall be a Red Cross approved first aid kit in each CRA.

## e) Water supply and sewage disposal

## 1) Water supply

A) Water supply, sewage disposal and plumbing systems shall comply with all applicable State and local codes and ordinances.

B) The water supply system must be located, constructed and operated in accordance with the standards of the State Public Health Department and local governing authorities.

C) Protect the potable water supply from contamination by properly installing and maintaining adequate backflow protection devices or providing adequate air gaps or

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chambers on all fixtures that may be subject to backflow or back siphonage.

## 2) Sewage disposal

All waste must be disposed of in an approved public sewage system or in a sewage system which is designed, constructed, installed, and operated in accordance with the standards of the Department of Public Health, Environmental Protection Agency and local governing authorities.

## f) Safety

1) The following safety features shall be provided and records shall be maintained that document strict compliance with the regulations of the state or local fire safety authority:

A) Provision of adequate and alternate exits and exit doors;

B) Provision of exit ramp(s) for persons using wheelchairs or wheeled platforms, having non-skid surface and slope not exceeding one foot in twelve maintained in an accessible condition at all times;

C) Provision of handrails on stairways;

D) Aisles and exits being free from all encumbrances and floors shall be uncluttered;

E) Flammable materials being properly stored and safeguarded;

F) Attics and basements being kept orderly and free of rubbish;

G) Records of annual fire safety inspections and reports.

2) The CRA shall have a written plan of evacuation in the event of fire or other emergency; development of such plan is the responsibility of the licensee. The licensee shall keep all residents and employees of the home informed of the plan and their responsibilities in meeting all potential emergencies and disasters pertinent to the area, such as fire, severe weather and missing persons.

## 3)

A) Plans for the assignment of personnel to specific tasks and responsibilities;

B) Instructions relating to the use of alarm systems and signals;

C) Information concerning methods of fire containment;

D) Systems for notification of appropriate persons, agencies, etc.;

E) Information concerning the location of firefighting equipment;

F) Specification of evacuation routes and procedures.

4) The plans and procedures shall be posted at suitable locations throughout the community residential alternative.

5) Fire and disaster drills shall be held at least four times annually for all residents and staff, and under varied conditions, in order to:

A) Ensure that all personnel are trained to perform assigned tasks;

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- B) Ensure that all personnel are familiar with the use of the firefighting equipment in the CRA;
- C) Evaluate the effectiveness of disaster plans and procedures;
- D) Fire and disaster drills shall include actual evacuation of residents to safe areas at least a minimum of four times per year, during different periods of day and night;
- E) There shall be special provisions for the evacuation of individuals with handicapping conditions including deafness and/or blindness. The mobility impaired shall be able to evacuate at grade level exiting. Mobility impaired shall be provided with bedrooms on grade level only;
- F) When the welfare of the residents precludes an actual evacuation of an entire building, there must be drills involving the evacuation of successive portions of the building under such conditions as to assure the capability of evacuating the entire building with the personnel usually available, should the need arise.
- 6) There shall be written evaluations of the fire safety training and drills which shall be maintained for three years.
- 7) Each CRA shall be inspected and approved for fire safety prior to the placement of residents and at least annually thereafter as part of the licensing process.

(Source: Amended at 17 Ill. Reg. 21387, effective November 29, 1993)

## Section 113.90 Food and nutrition services

## a) General

- 1) Nutrition is an important part of home living. Menus should be planned to meet the specific dietary needs of the individuals in the CRA, including consideration of the nutrient value of food consumed between meals.
- 2) Menus must vary daily and must be adjusted for seasonal changes and holidays.
- 3) Food and nutrition services shall recognize and provide for the physiological, emotional and cultural needs of each resident, through provision of a planned, nutritionally adequate diet.
- 4) There shall be an initial and periodic evaluation as necessary of the nutritional status of each resident, including:
  - A) Determination of dietary requirements and assessment of intake and adequacy;
  - B) Assessment of food service practices;
  - C) Assessment of feeding practices, capabilities and potential.
- 5) Records and consultations and recommendations shall be maintained by the agency.
- 6) Dining experiences must be provided for more than one type of eating arrangement (e.g., cafeteria, family style, picnic, restaurant).

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- 7) Dietary practices in keeping with the religious requirements of the resident's faith groups shall be observed at the request of the resident.
- 8) Individuals shall eat in an appropriate position for the meal or snack unless contraindicated by the IHP or physician's orders.
- 9) Denial of a meal shall not be used as punishment.
- b) Dining areas
  - 1) Dining areas shall:
    - A) Be equipped with tables, chairs, eating utensils and dishes designed to meet the developmental needs of each resident;
    - B) Promote a pleasant and home-like environment that is attractively furnished and decorated;
    - C) Be designed to stimulate maximum self-development, social interaction, comfort and pleasure.
  - 2) Dining areas shall be adequately supervised and staffed for the direction of self-help eating procedures and to assure that each resident receives an adequate amount and variety of food.
- c) Food service
  - 1) Food shall be served:
    - A) As soon as possible after preparation, in order to conserve nutritive value;
    - B) In an attractive manner;
    - C) In appropriate quantity;
    - D) At appropriate temperature;
    - E) In a form consistent with the developmental level of the resident;
    - F) With appropriate utensils.
  - 2) Appropriate modifications to food serving and utensil equipment to provide for the development of functional chewing, sucking and swallowing to ensure proper bodily elimination shall be provided.
  - 3) Three meals must be provided daily, at hours in accordance with local custom, when residents are not routinely absent from the CRA for work, school or other purposes. If only breakfast and dinner are served in the CRA, these two meals must together provide at least two-thirds of the total daily nutritional allowances of each resident.
  - 4) Dishes and kitchen equipment shall be provided sufficient to meet each resident's needs.
- d) Food preparation
  - 1) Food shall be prepared by methods that:
    - A) Conserve nutritive value;
    - B) Enhance flavor;
    - C) Enhance appearance.
  - 2) When food is transported, it shall be done in a manner that maintains proper temperature, protects the food from contamination and spoilage, and ensures the preservation of nutritive value.

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- 3) There shall be competent personnel to fulfill the objectives of the food and nutrition services.
- 4) Modified diets shall be:
  - A) Prescribed by the resident's physician with a record of the prescription kept on file;
  - B) Planned, prepared and served by persons who have received adequate instruction;
  - C) Periodically reviewed and adjusted as needed.
- e) Food service sanitation. Food service shall:
  - 1) Maintain sanitary standards in compliance with state and local regulations;
  - 2) Orient, train and supervise food service personnel if used by CRA;
  - 3) Maintain ongoing instruction of food handlers in personal hygiene and sanitary food handling practices;
  - 4) Emphasize hand washing and other hygiene practices by staff as well as teaching this practice to residents.
- f) Food records
 

Records of menus as served shall be filed and maintained for at least 30 days.

## Section 113.100 Admission/discharge

- a) The community residential alternative provider must prepare a written policy regarding the following:
  - 1) Preadmission, admission and discharge procedures;
  - 2) Admission criteria to include age and type or degree of handicap;
  - 3) Method for developing individual habilitation plans;
  - 4) Developmental and remedial services provided by other agencies or persons to residents through written agreement;
  - 5) Nondiscrimination statement;
  - 6) Nonacceptance of persons who have a communicable disease or a disease endangering the health of other residents.
- b) Each resident must have a medical evaluation conducted by a physician within 30 days preceding admission.
- c) Except in an emergency, the interdisciplinary team planning for discharge shall invite the region, receiving agency (if applicable), the resident, the legal guardian (if applicable), and other family members requested by the resident.
- d) The community residential alternative must provide counseling concerning the advantages and disadvantages of discharge to the resident's responsible relative or guardian who request release, and to the resident himself or herself.
- e) At the time of discharge, a summary of pertinent information from the resident's record must be transmitted to the receiving residential facility in conformity with the resident's rights.

## Section 113.110 Resident rights

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- a) The owner and licensee are liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the resident. In addition, the licensee shall pay the actual damages, or \$500, whichever is greater, and costs and attorney's fees to a resident whose rights under the Community Residential Alternatives Licensing Act or under this Part are violated.
- b) On admission to a community residential alternative, residents shall be provided with a copy of their rights and related rules, regulations and policies, complaint procedures and the name, address and telephone number of the Guardianship and Advocacy Commission (Section 5(11) of the Act) and the agency's human rights committee. This is interpreted to mean that a community residential alternative shall apprise residents of their rights, rules, regulations and policies, complaint procedures and a copy of these documents shall be available to the resident, legal guardian, or to a responsible person.
- c) Rights or residents of mental health and developmental disabilities services provided by the community residential alternative program shall be governed by Chapter 2 of the Mental Health and Developmental Disabilities Code.
- d) Residents shall have the right to privacy (area appropriate).
- e) Married residents have the right to reside in the same room within the CRA.
- f) It is the right of each resident to wear his or her own clothing that is age and season appropriate, clean, in good repair, and available daily. Clothing which is marked must be marked inconspicuously. Sufficient and readily available closet and drawer space shall be provided for each resident.
- g) It is the right of the resident to be permitted the free exercise of religion. On a resident's request, and if necessary, at the resident's expense, the licensee shall make arrangements for a resident's attendance at religious services of the resident's choice. However, no religious beliefs or practices, or attendance at religious services may be imposed upon any resident by the CRA and its employees.
- h) It is the resident's right within 14 days after admission to have a written preliminary habilitation plan prepared consistent with the resident's diagnosis and needs. The resident, the legal guardian (if applicable), and the resident's representative shall be involved in the development of the IHP within 30 days after admission replacing the preliminary habilitation plan.
- i) It is the right of residents to be encouraged to be involved in the following activities to the extent described in the habilitation plan.
  - 1) The management of their financial affairs;
  - 2) The management of their personal preferences;
  - 3) To choose personal clothing and to use personal items in their immediate living quarters;
  - 4) The exercise of unimpeded, private and uncensored communication of their choice by mail, telephone or visitation.



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- j) The residents have the right to present grievances on behalf of themselves or others to the facility personnel, licensee, federal, state or local government bodies or other persons without threat of discharge or reprisal in any form or manner whatsoever.
- k) The residents' rights to confidentiality of records and personal communications are protected by the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110].
- 1) Residents maintain the right to vote as defined in the Election Code [10 ILCS 5].

## Section 113.120 Resident records

- a) There shall be a chronologically continuous record that contains basic information requested in the individual habilitation plan and meets the following criteria, for each resident:
- 1) Documents an assessment that identifies the specific developmental needs of the resident;
  - 2) Specifies the individual habilitation plan devised to meet the identified needs, with program goals stated in behavioral terms;
  - 3) Reports the behavior response of the resident to the plan, and the resident's progress toward the goals;
  - 4) Documents a review and subsequent modification of the habilitation plan and goals relative to the resident's response;
  - 5) Provides a means for communication of relevant information among appropriate program personnel contributing to the resident's habilitation program and with due respect to the resident's right to confidentiality;
  - 6) All entries in the resident's records shall be:
    - A) Legibly written in ink;
    - B) Dated;
    - C) Authenticated by the signature and identification of the individual making the entry.
- b) The following information shall be obtained and entered in the resident's record with a face sheet as appropriate and other forms:
- 1) Name, date of admission, date of birth, place of birth, citizenship status, marital status, Social Security number, and Department identification number;
  - 2) Name and address of parents, legal guardian, advocate and resident's representative;
  - 3) Sex, race, height, weight, color of hair, color of eyes, identifying marks and recent photograph;
  - 4) Reason for admission or referral problem;
  - 5) Referral source;
  - 6) Legal competency status;
  - 7) Language spoken or understood;
  - 8) Source of support, including Social Security, veterans benefits and insurance;
  - 9) Provisions for clothing and other personal needs;

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- 10) Information relevant to religious affiliation, if any;
  - 11) Report(s) of the preadmission evaluation(s) of the facility;
  - 12) Reports of previous histories and evaluations, if available;
  - 13) A report of the review and updating of the preadmission evaluation;
  - 14) A comprehensive evaluation and individual habilitation plan, designed by an interdisciplinary team and the resident. Those individuals in attendance shall be so recorded.
  - 15) Reports of accidents, seizures, illnesses and treatments thereof and immunizations and any other problems requiring treatment;
  - 16) Record of, at least quarterly, the review and evaluation of the program, developmental progress and status of the resident;
  - 17) An annual IHP which is based on the needs identified by ICIS and other appropriate information, i.e., day programs;
  - 18) Record of the resident's response to his or her program;
  - 19) Record of significant behavior incidents;
  - 20) Record of family visits and contacts;
  - 21) Record of attendance and leaves;
  - 22) A discharge summary to include a brief recapitulation of findings, events and progress during residence, including diagnosis, prognosis and recommendations and arrangements for future programming.
  - 23) Any known allergies; i.e., penicillin, etc;
  - 24) Preferred physician and hospital;
  - 25) Notations of other agencies and services being provided to the resident concurrently.
- c) In the event of death:
- 1) A copy of the death certificate should be placed in the resident's record.
  - 2) When a necropsy is performed, provisional anatomic diagnosis should be recorded within 72 hours, when feasible, and the complete protocol should be made part of the record within three months.
- d) All information contained in a resident's record, including information contained in an automated data bank, shall be considered privileged and confidential, in accordance with Mental Health and Developmental Disabilities Confidentiality Act.
- 1) The record and/or excerpts may be obtained from the CRAS jurisdiction and safekeeping only in accordance with a court order, subpoena, or statute, without written release by the resident or his or her legal guardian.
  - 2) There shall be written policies governing access to, duplication of, and dissemination of information from the record.
- e) While the type and amount of statistical information will depend upon the CRA's particular needs, such information should be current. The CRA must participate in a behavioral assessment, Illinois Client Information System (ICIS), of the resident at the beginning of the program for the individual and on an annual basis thereafter.

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1) Heading of the Part: Abandoned Mined Lands Reclamation

2) Code Citation: 62 Ill. Adm. Code 2501

3) Section Number: Proposed Action:

- 2501.1 Amend
- 2501.4 Amend
- 2501.7 Amend
- 2501.8 New
- 2501.10 Amend
- 2501.11 New
- 2501.13 Amend
- 2501.16 Amend
- 2501.19 Amend
- 2501.22 Amend
- 2501.25 Amend
- 2501.28 Amend
- 2501.31 Amend
- 2501.34 Amend
- 2501.37 Amend
- 2501.40 New

4) Statutory Authority: Implemented and authorized by the Abandoned Mined Lands and Water Reclamation Act [20 ILCS 1920]

5) A complete description of the subjects and issues involved: The amended administrative rules mirror changes to the federal and State statutes that have taken effect since the existing administrative rules were adopted; the proposed rules have been updated to reflect the merger of the Abandoned Mined Lands Reclamation Council into the Department of Natural Resources and provide accurate statutory and regulatory citations.

6) Will this proposed rule replace an emergency rule currently in effect?  
No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: These rules do not create or expand a state mandate.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 45 days of the publication of this notice to:

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Section 113.130 Resident living program

- a) Services shall be oriented to the individual and shall be designed to meet the needs of the individual and his or her family. Individuals are recognized as persons with basic human needs, aspirations, desires and feelings and are citizens of a community with all rights, privileges, opportunities and responsibilities accorded other citizens. Only secondarily are they individuals who have a mental disability.
- b) Based on their needs, individuals shall receive supervision and supportive services which may range from continuous to intermittent. CRAs shall be designed to promote independence in daily living, economic self-sufficiency and integration into the community.
- c) The services plan shall include the names and titles of all staff and other persons contributing to the plan.

(Source: Amended at 17 Ill. Reg. 21387, effective November 29, 1993)

Section 113.140 Unusual occurrences

In the event of any unusual occurrence, including crimes committed by or to the resident, serious illness or accident, impending death, or death, the resident's next of kin, or the person who functions in that capacity (a guardian or citizen advocate), agency and the Department shall be notified as soon as possible.

- a) The wishes and needs of the resident and/or the guardian, concerning religious matters shall be determined and, insofar as possible, fulfilled.
- b) If a death occurs, the agency shall render as much assistance as possible in making arrangements for services and burial, as requested by the family and/or the guardian (if applicable).
- c) The coroner or medical examiner and other appropriate public authorities and guardian, if applicable, shall be notified of deaths, in accordance with state laws.

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Peggy Witt, Legal Counsel  
Illinois Department of Natural Resources  
524 South Second Street  
Springfield IL 62701

The Department will hold a public hearing on the proposed rulemaking on May 7, 1998 at the Illinois Department of Natural Resources located at 300 West Jefferson, Ste. 300, Springfield, Illinois at 11:00 a.m. Representatives of small businesses are encouraged to comment about the impact of the proposed rulemaking at this public hearing.

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

- 13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: The Department neglected to submit a regulatory agenda on this Part.

The full text of the Proposed Amendments begin on the next page.

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TITLE 62: MINING  
CHAPTER II: DEPARTMENT OF NATURAL RESOURCES  
ABANDONED-MINED-LANDS-RECLAMATION-600901B

## PART 2501

## ABANDONED MINED LANDS RECLAMATION

Section	Scope
2501.1	Definitions
2501.4	Objectives and Priorities
2501.7	Utilities and Other Facilities
2501.8	Eligible Coal Lands and Water
2501.10	Eligible Non-coal Lands and Water
2501.11	Preliminary Project Selection
2501.13	Final Selection and Project Deferment
2501.16	Annual Grant Process
2501.19	Reclamation Activities
2501.22	Reclamation on Private Lands
2501.25	Rights of Entry
2501.28	Land Acquisition, Management and Disposal
2501.31	Emergency Abatement Activities
2501.34	Notice of Reclamation
2501.37	Public Participation (Repeated)
2501.40	

AUTHORITY: Implementing and authorized by the Abandoned Mined Lands and Water Reclamation Act [20 ILCS 1920]

SOURCE: Adopted and codified at 5 Ill. Reg. 9740, effective October 1, 1981; recodified at 8 Ill. Reg. 7212; amended at 9 Ill. Reg. 6641, effective May 1, 1985; emergency amendment at 10 Ill. Reg. 1254, effective January 1, 1986, for a maximum of 150 days; emergency expired May 30, 1986; amended at 10 Ill. Reg. 14271, effective August 14, 1986; amended at 15 Ill. Reg. 6513, effective May 3, 1991; emergency amendment at 16 Ill. Reg. 2897, effective February 4, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 8345, effective May 26, 1992; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 2501.1 Scope

This Part implements the Abandoned Mined Lands and Water Reclamation Act [20 ILCS 1920], which provides that the Department of Natural Resources shall administer a program for the reclamation of Abandoned Mined Lands ("AML"). This Act is complementary to Title IV of the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq., P.L. 95-87, as amended). This Part implements P.A. 81-1029, the Abandoned-Mined-Lands-and-Water-Reclamation Act (11th Rev. Stat. 1985, ch. 96-1/27, pars. 0001-01 et seq.) which became effective on June 17, 1980. The Act delegates to the Abandoned-Mined-Lands Reclamation Council the responsibility for reclaiming coal-mined lands which



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and abatement, control or prevention of adverse effects of mining. [20 ILCS 1920/1.03(5)] {111:---Rev:---Stat:---1905,---ch:---96---1/27---par: 0001-03(4)}(77)

"Section" means a Section section of this Part part, unless otherwise clearly identified.

"State Act" means the the Abandoned Mined Lands and Water Reclamation Act, P.A. 01-10307, effective June 17, 1900, as amended, [20 ILCS 1920] {111:---Rev:---Stat:---1905,---ch:---96---1/27---par: 0001-01-10307}.

"State Reclamation Plan" or "SRP" means the document required under regulations promulgated by the Federal Office (30 CFR 884.13) in order for Illinois to be eligible to receive funds under the Federal Act. Any statements of Departmental Council policy contained in or added to the SRP which are "rules" as that term is defined in the Illinois Administrative Procedure Act [5 ILCS 100] {111:---Rev:---Stat:---1991,---ch: 127,---par: 1001-1-10307} shall be included as rules in this Part.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 2501.7 Objectives and Priorities

- a) It is the policy of this State to provide for the conservation and reclamation of lands and water affected by mining which have been abandoned, in order to restore these abandoned lands and waters to such productive use, in accordance with this State's conservation and land reclamation policies, as will aid in maintaining or improving the property tax base, protect the health, safety and general welfare of the people, promote the natural beauty and aesthetic values of this State and enhance the environment, and correct and prevent soil erosion, stream pollution, water, air and land pollution, and other injurious effects to persons, property, wildlife and natural resources. [20 ILCS 1920/1.02] {111:---Rev:---Stat:---1907,---ch:---96---1/27---par: 0001-02(4)} The goal of the State state reclamation program described in this Part is to alleviate adverse environmental effects of abandoned mines and, whenever possible, to improve those abandoned lands to support a suitable land use.
- b) It is the expressed intent of the General Assembly that the Department Council, in implementing these policies, administer the reclamation program in a way which satisfies the requirements of the Federal Act. Accordingly, the provisions of this Part shall be construed, if possible, in a manner which is consistent with the requirements of the Federal Act and the regulations promulgated thereunder.
- c) Expenditures of money on abandoned coal mined lands for the purposes of the reclamation program shall reflect the following priorities in the order stated:

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have---been---abandoned---and---for---which---there---is---no---continuing---reclamation responsibility under existing State or Federal laws and non-coal mined lands and water left abandoned or left in an inadequate reclamation status and which pose extreme danger to public health, safety, general welfare and property. The Act is complementary to Title IV of P.A. 95-87, the Federal Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201-1203) Under the Federal Act, a portion of the money collected by the federal government from a fee imposed on coal mining operations can be provided by cooperative agreements or grants to states which have a federally approved State Reclamation Plan.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 2501.4 Definitions

As used in this Part --

Council means the Abandoned Mined Lands Reclamation Council created by Section 1.04 of the State Act (111:---Rev:---Stat:---1905,---ch:---96---1/27 par: 0001-04); who the Council consists of the Directors or their designees of the following Departments, Boards or Agencies: Agriculture, Capital Development Board, Commerce and Community Affairs, Conservation, Environmental Protection Agency, Mines and Minerals, and Energy and Natural Resources. The Lieutenant Governor or his designee is the Chairman of the Council.

"Department" means the Illinois Department of Natural Resources, Office of Mines and Minerals, Division of Abandoned Mined Lands Reclamation of the State of Illinois, with principal offices of business at Springfield.

"Federal Act" means the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87; 30 U.S.C. 1201 et seq.).

"Federal Office" or "OSM" means the Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

"Inventory" means the contents of the supplement to the "Illinois State Plan for Abandoned Mined Lands" (Resource Document). The Resource Document identifies all known acreage in Illinois which has been impacted by past coal mining and is an extreme danger or creates adverse effects. The inventory is updated as new data becomes available.

"Reclamation" or "reclamation activities" means the restoration of abandoned lands and waters to constructive uses, including, but not limited to forests, grasses and legumes, row crops, wildlife and aquatic reserves and recreational, residential, and industrial sites,

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- 1) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;
- 2) The protection of public health, safety, and general welfare from adverse effects of coal mining practices;
- 3) The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity;
- 4) Research-and-demonstration-projects-relating-to--the--development of--surface--mining-reclamation-and-water-quality-control-program methods-and-techniques;
- 4)5) The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices;

5)6) The development of publicly owned land adversely affected by coal mining practices including land acquired as provided in the Federal Act for recreation and historic purposes, conservation, and reclamation purposes and open space benefits. [20 ILCS 1920/2.03(a)] {111-Rev-Stat--1989--ch--96--1/2--par--800+894+} Generally, projects lower than a priority 2 should not be undertaken until all known higher priority coal projects either have been accomplished, are in the process of being reclaimed, or have been approved for funding by OSM, except in those instances where such lower priority projects may be undertaken in conjunction with a priority 1 or 2 site in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" (61 FR 68777-68785, December 30, 1996).

- e) When the Department finds in writing that the adverse effects of coal mining practices have an adverse economic impact upon a community, a project shall be designated as a priority 1 or 2 threat to the general welfare, regardless of the nature of the problem conditions.
- f)1) The Department Council may make expenditures on lands mined for substances other than coal for the protection of the public health and safety; provided, however, that annual expenditures for non-coal reclamation shall not exceed 2% of the Department's Council's annual budget for mined mine land reclamation; and provided further that all obligations for such expenditures shall be made by August 31, 1999.
- 147-1994-

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 2501.8 Utilities and Other Facilities

- a) The Department may expend up to 30 percent of the AML funds granted

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annually to the State for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supplies, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.

- b) If the adverse effect on water supplies referred to in this Section occurred both prior to and after August 3, 1977, the project shall remain eligible notwithstanding the criteria specified in Section 2501.10(b), if the Department finds in writing, as part of its eligibility opinion, that such adverse effects are due predominantly to effects of mining processes undertaken and abandoned prior to August 3, 1977.

- c) If the adverse effect on water supplies referred to in this Section occurred both prior to and after the dates (and under the criteria set forth under Section 2501.10(d)), the project shall remain eligible, notwithstanding the criteria specified in Section 2501.10(b), if the Department finds in writing, as part of its eligibility opinion, that such adverse effects are due predominantly to the effects of mining processes undertaken and abandoned prior to those dates.

- d) Enhancement of facilities or utilities under this Section shall include upgrading necessary to meet any local, State, or Federal public health or safety requirement. Enhancement shall not include, however, any service area expansion of a utility or facility not necessary to address a specific abandoned mined land problem.

(Source: Added at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 2501.10 Eligible Coal Lands and Water

a) Coal lands and water are eligible for reclamation activities with federal funds provided pursuant to the Federal Act if:

- a)1) They were mined for coal or affected by coal mining processes;
- b)2) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and
- c)3) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government, or as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation additional federal funding may be sought.

- d) Notwithstanding subsections (a), (b) and (c) of this Section, coal lands and waters damaged and abandoned after August 3, 1977 by coal mining processes are also eligible if the Department, with the concurrence of OSM, finds in writing that:

- 1) They were mined for coal or affected by coal mining processes



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and:

- A) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and June 1, 1982, and any funds for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or
- B) The mining occurred between August 4, 1977 and November 5, 1990 and the surety of the mining operator became insolvent during that period, and as of November 5, 1990, funds immediately available from proceedings relating to insolvency, or from any financial guarantee or other source, are not sufficient to provide for adequate reclamation or abatement at the site; and
- 2) The site qualifies as a priority 1 or 2 site under Section 2501.7(c) and (e) of this Part.
  - e) The Department may expend funds available under paragraphs 402(g)(1) and (5) of the Surface Mining Control and Reclamation Act for reclamation and abatement of any site eligible under subsection (d) above, if the Department, with concurrence of OSM, makes the findings required in subsection (d) above and the Department determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water eligible pursuant to subsection (a), (b) or (c) above that qualify as a priority 1 or 2 site under Section 403(a) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1233(s)).
  - f) With respect to lands and waters eligible pursuant to subsection (d) or (e) above, monies available from sources outside the Abandoned Mined Lands Reclamation Federal Trust Fund or that are ultimately recovered from responsible parties shall either be used to offset the cost of the reclamation or transferred to the Abandoned Mined Lands Reclamation Federal Trust Fund if not required for further reclamation activities at the permitted site.
  - g) If reclamation of a site covered by an interim or permanent program permit is carried out under the AML program, the permittee of the site shall reimburse the AML Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. The Department, when performing reclamation under subsection (d) above shall not be held liable for any violations of any performance standards or reclamation requirements specified in Title V of the Federal Act, or in the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720], nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in those Acts.
  - h) Surface coal mining operations on lands eligible for reining shall not affect the eligibility of such lands for reclamation and restoration after the release of the bonds or deposits posted by any such operation. If the bond or deposit for a surface coal mining

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- operation on lands eligible for reining is forfeited, AML funds may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that, if emergency conditions warrant, the Department shall immediately exercise its authority under the Emergency program.
- b) Non-coal lands and water are eligible for reclamation activities if:
    - 1) They were mined or affected by mining processes;
    - 2) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition;
    - 3) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government as a result of bond forfeiture which will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation or in cases where the forfeited bond is insufficient to pay the total cost of reclamation; additional federal funding may be sought;
    - 4) The Governor concurs that reclamation is necessary and submits a letter of request to the Federal Office; and
    - 5) The reclamation is necessary for the protection of the public health and safety, or all coal-related reclamation has been accomplished;

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 2501.11 Eligible Non-coal Lands and Water

Non-coal lands and water are eligible for reclamation activities if:

- a) They were mined or affected by mining processes;
- b) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition;
- c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government as a result of bond forfeiture, which will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation or, in cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional federal funding may be sought;
- d) The Governor concurs that reclamation is necessary and submits a letter of request to the Federal Office;
- e) The reclamation is necessary for the protection of the public health and safety, general welfare and property from extreme danger of adverse effects of non-coal mining practices; and
- f) They are not designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 et seq.) or have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42



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U.S.C. 9601 et seq.).

(Source: Added at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 2501.13 Preliminary Project Selection

- a) The Department Council shall select projects for reclamation from an abandoned mine site database which contains all known abandoned mine sites in the State which are eligible under Sections 2501.10 and 2501.11 that were affected prior to August 31, 1977 and which contained problem conditions. This database includes sites reported in the Resource Document of the original State Plan, all high priority sites included in the Phase II National Abandoned Mine Land Inventory, and additional sites which may periodically be brought to the attention of the Department Council by landowners or other concerned citizens.
- b) The Department Council shall review the AML database each year to identify the unreclaimed or inadequately reclaimed sites containing the most significant remaining problem conditions. Problem conditions include in order of relative significance:
- 1) Surface openings resulting from improperly sealed mine portals or caused by underground mine subsidence;
  - 2) Escaping mine gases;
  - 3) Surface or underground mine fires;
  - 4) Hazardous equipment or facilities left behind by the mining operation;
  - 5) Dangerous impoundments constructed by the mine;
  - 6) Dangerous, unprotected highwalls in close proximity to populated areas or public use;
  - 7) Polluted water used for consumption;
  - 8) Dangerous refuse piles or embankments;
  - 9) Flooding of roads or improved property caused by sedimentation from AML sites;
  - 10) Hazardous recreational water bodies;
  - 11) Coal exposed coal refuse material or spoilbanks contributing to off-site pollution;
  - 12) Acid water impoundments;
  - 13) Coal refuse material or spoilbanks adversely affecting land or water resources.
- c) Sites identified as containing significant problem conditions shall be further prioritized based upon an evaluation of the following criteria to determine the probable benefits to be derived from reclamation:
- 1) Relative degree of continued impacts if left unreclaimed;
  - 2) Proximity of site to populated areas or public use areas;
  - 3) Additional site benefits including improvements in land use and development of public lands; protection of public facilities; and evaluation research or demonstration of new techniques;

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- 4) Technology available to assume reasonable probability of success; and
- 5) Cost-effectiveness of the necessary action.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 2501.16 Final Selection and Project Deferment

- a) From the most significant abandoned mine sites identified in accordance with Section 2501.13, the Department will select projects for reclamation based upon the following criteria and considerations: projects will be developed for inclusion in the annual grant application which have the highest probability for successful reclamation within the upcoming three-year grant period based upon the criteria and considerations listed below.
- a) Sites must exhibit a high probability for achievement of successful reclamation including:
- 1) Satisfactory funding levels to complete reclamation for the immediate grant year;
  - 2) A completed application from the owner(s) of property that contains the significant portion of problem conditions on a site; Availability of Design and Technical Staff assigned to three regions of the State (northern, central, and southern); for project design and/or monitoring;
  - 3) Existence of a technically feasible design solution to existing problems; and
  - 3) Evidence that a timely Consent for Entry can be obtained from the owner(s) of the project site.
- b) Significant sites exhibiting one or more of the following conditions shall be eliminated from consideration for funding for a particular year when:
- 1) There exists ongoing use and responsibility for reclamation to alleviate problem conditions, associated with active landfill sites, salvage yards, material storage yards, or other uses of mined lands;
  - 2) There is an ongoing or planned remaining operation for interested in the site;
  - 3) There is a planned or currently operating secondary coal recovery operation; provided, however, that only the areas within the site which will be affected by such operation shall be eliminated from consideration;
  - 4) There is ongoing or planned reclamation or development of a site by any federal office, the Natural Resource Conservation Service Soil Conservation Service, or other public or private agencies or individuals; or
  - 5) There is ongoing or anticipated successful stabilization by natural processes so that natural reclamation will be effective

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furnishing of services, plans, lay outs, materials, or any matters of service incidental to the reclamation of such land [20 ILCS 1920/3.05]. ~~that--Rev- Stat--1985--ch--96-172--part--8803-85-- All Provided--however--that--all parties to any such contract or cooperative agreement must agree to comply with all applicable requirements of the State and Federal law. Acts--and--rules promulgated--thereunder--~~

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 2501.25 Reclamation on Private Lands

Reclamation may be carried out on private land if consent is obtained as provided in Section 2501.28(a), or if the requisite findings are made and notice given pursuant to Section 2501.28(b). When reclamation is to be carried out on private land, the Department ~~Council~~ shall adhere to the following procedures concerning appraisals, liens, and satisfaction of liens:

a) Appraisals

- 1) A notarized appraisal of private land to be reclaimed which may be subject to a lien under subsection (b) shall be obtained from an independent professional appraiser. Such appraisal shall meet the quality of appraisal practices found in Regulation 10 of the American Institute of Real Estate Appraisers of the National Association of Realtors, Code of Professional Ethics, as amended November 4, 1989. The appraisal shall state:

- A) The estimated market value of the property in its unreclaimed condition; and
  - B) The estimated market value of the property as reclaimed.
- 2) This appraisal shall be made prior to the start of reclamation activities, except as provided in subsection (a)(3). The Department ~~Council~~ shall furnish to the appraiser information of sufficient detail in the form of plans, factual data, specifications, etc., to make such appraisals. When reclamation requires more than six months to complete, an updated appraisal of the estimated market value of the property as reclaimed shall be made to determine if the increase in value as originally appraised has actually occurred. Such updated appraisal shall not include any increase in value of the land as unreclaimed. If the updated appraisal value results in lower increase in value, such lower increase shall be used as the basis for the lien. However, an increase in value resulting from the updated appraisal shall not be considered in determining a lien.
- 3) When any abandoned mine condition presents a high probability of substantial physical harm to the health, safety, or general welfare of people, as set forth in Section 2501.34, before the danger can be abated under normal program operations procedures, reclamation activities or abatement procedures shall not be delayed in order to obtain any necessary appraisal. In such

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and efficient considering such factors as cost and potential or existing hazards to human life, the environment, or public or private property.

- e) ~~The Executive Director shall present the proposed projects for the grant application to the Council members for preliminary approval at a Council meeting. A list of approved projects will be advertised for public comment as part of the annual grant process. Thereafter, the proposed project list shall be subject to final approval of the Council members at the next Council meeting. The approved project list shall be included in the annual grant submission.~~

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 2501.19 Annual Grant Process

The Department shall submit an annual grant application to OSM in accordance with the requirements of 30 CFR 886 to cover allowable costs of the AML program including the actual costs of construction, operation and maintenance, planning and engineering, construction inspection, other necessary administrative costs, and up to 90 percent of the costs of acquisition of land. Copies of the annual AML grant application will be provided to the public upon written request to the Department, 524 S. Second Street, Springfield, Illinois 62701. Notice of annual AML grant applications will be circulated through the Illinois State Library System and the Illinois State Clearinghouse. ~~For projects selected for reclamation pursuant to Section 2501.16, the Council will submit an annual grant application to the Federal Office. It is the Council's policy, in developing proposed annual grant applications, to encourage public input. Project recommendations from local officials, organizations, and citizens will be considered. Any interested person may submit information and comments regarding AML programs, projects, and Council activities as set forth in 2-III-Adm--Code--1588-68. Copies of the annual grant application will be provided to the public upon written request to the Council, 928--South--Spring--Street, Springfield, Illinois--62704. In addition, notice of annual grant applications will be circulated through the Illinois State Library System and the Illinois State Clearinghouse. The Council shall comply fully with the requirements of 30--CFR--886--(1989) with respect to all annual grant applications. No incorporation by reference in this Part includes any later amendments or editions.~~

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 2501.22 Reclamation Activities

~~The Department Council will enter into cooperative agreements as necessary and appropriate with any person or federal governmental entity in relation to the reclamation of abandoned land, including but not limited to the~~



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instances, the appraisal shall be obtained at the earliest practical time after reclamation activities or abatement procedures have been commenced.

## b) Liens

1) The Department Council shall place a lien against land reclaimed if the reclamation results in a significant increase in fair market value, except that:

A) A lien shall not be placed against the property of a surface owner who owned the property prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation which necessitated the reclamation work. [20 ILCS 1920/2.09]; (Rev. Stat. 1989, ch. 96, par. 1-0902-091b77)

B) A lien shall be waived if findings made prior to construction indicate that the reclamation work to be performed on private land shall primarily benefit the health, safety, or environmental values of the greater community or area in which the land is located; or if the reclamation is necessitated by an unforeseen occurrence, and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the unforeseen occurrence; and

C) The Department Council shall waive the lien if the cost of filing it, including indirect costs to the State, exceeds the increase in fair market value as a result of the reclamation activities.

2) The determination of what constitutes a significant increase in market value of land subject to a potential lien, or what factual situation justifies a waiver of lien, will be made to assure that AML program funds are used to benefit the health, safety, or environmental values of the greater community and avoid windfall profits to owners of reclaimed land. The manner in which the subject property was acquired shall be considered. An increase in total fair market value of less than \$8,000-00, or less than 20 percent of total fair market value before reclamation, shall not be considered significant.

3) A lien shall be waived if findings made prior to construction demonstrate that the reclamation work is being undertaken solely to seal, fill, or mark an open or settled mine shaft, drift or slope entry, adit or other mine opening or a subsidence pit.

4) If a lien is to be filed, the Department Council shall, within six months after the completion of the reclamation work, file a statement in the Office of the Recorder of Deeds in the County wherein the reclaimed land is located. Such statement shall consist of notarized copies of the appraisal obtained under subsection (a) and shall include an account of moneys expended for the reclamation work. The statement shall state the priority claimed for the lien. The amount reported to be the increase in

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value of the property shall constitute the lien to be recorded. Provided, however, that prior to the time of the actual filing of the proposed lien, the landowner shall be notified of the amount of the proposed lien and shall be allowed a reasonable time to repay that amount instead of allowing the lien to be filed against the property involved.

5) Within 60 days after the lien is filed, the landowner may petition the Department Council, through the Executive Director of the Office of Mines and Minerals, for a hearing to determine the increase in market value of the land as a result of the reclamation work. Any party aggrieved by the decision of the Department Council may seek appropriate judicial relief at the Circuit Court.

## c) Satisfaction of Liens

1) A lien placed on private property shall be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property.

2) A reclamation lien created pursuant to Section 2.09 of the State Act shall continue in existence until satisfied, subject only to the 40 year limitation period and requirements of Sections 13-118 through 13-121 of the Code of Civil Procedure [735 ILCS 5/13-118 through 13-121]. The Council shall maintain or renew each lien from time to time as may be required.

3) If reclaimed property subject to a reclamation lien is transferred for an actual consideration in excess of the appraised fair market value of the property after reclamation, and the lien is not satisfied at the time of transfer, the Department shall request the Attorney General to bring an appropriate foreclosure action to satisfy the lien.

4) Moneys derived from the satisfaction of liens established under this Section shall be deposited in the State fund currently entitled "Abandoned Mined Lands Reclamation Council Federal Trust Fund."

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 2501.28 Rights of Entry

a) Prior to entry onto private lands for any purpose other than the visual inspection of the property under the State Act or this Part these rules, the Department Council shall obtain advance written consent from the owners of record of the property to be entered, when the owners can be located and contacted and the owners agree to a reclamation on their property. The consent shall be in the form of a signed statement by the owner of record or his or her authorized agent which sufficiently identifies includes the legal description of the



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land to be entered, the projected nature of the studies, exploration, or work to be performed on the land, and any special conditions for entry. The statement shall not include any commitment to perform reclamation work or to compensate the owner for entry. If entry is for purposes of visual inspection only, it shall be sufficient if verbal consent is obtained prior to entry from the owner or one authorized to consent to such entry.

- b) If the owner cannot be found, or will not consent to the proposed reclamation activities, the Department Council-staff may enter the land to perform reclamation activities. However, no such action shall be taken unless the Department Council first:

1) Finds, in writing with supporting reasons, that:

- A) The land has been adversely affected by past mining practices; and  
 B) The adverse effects are at a state where, in the interest of the public health or safety, reclamation activities should be carried out;

2) Gives written notice of its intent to enter for purposes of conducting reclamation activities at least 30 thirty days prior to entry. The notice shall be by certified mail, return receipt requested, and shall include a copy of the findings required by subsection (b)(1) of this Section. If the owner is not known, or cannot be found, the notice shall be posted in a conspicuous place on the property to be entered, and advertised once in a newspaper of general circulation in the county or municipality in which the property is located. The posted and published notice shall include a statement indicating where a copy of the findings required by subsection (b)(1) of this Section may be obtained. Posting and publication shall take place at least 30 thirty days prior to entry.

- c) If the Department Council finds that any lands may have been adversely affected by past mining practices, the Department Council-staff may, if necessary, enter the property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past mining practices and the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects.

1) If the owner of such land will not consent to entry and the Department Council determines that a study or exploration is in the public interest, the Department Council shall give notice, in writing, to the owner at least 30 thirty days prior to entry. The notice shall be by certified mail, return receipt requested, and shall include a statement of the reasons why entry is believed necessary.

2) If the owner is not known, or cannot be found, the notice shall be posted in a conspicuous place on the property to be entered, and advertised once in a newspaper of general circulation in the county or municipality in which the property is located. Posting and publication shall take place at least 30 thirty days prior to

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entry.

- d) Entry under this Section shall be construed as an exercise of the police power for the protection of the public health, safety, and general welfare, and shall not be construed as an act of condemnation of property or trespass thereon [20 ILCS 1920/2.05(d)] [11-Rev-Stat-1993-ch-96-1/2, par-006-04(d)].

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 2501.31 Land Acquisition, Management and Disposal

- a) The Department Council shall acquire eligible land as necessary for reclamation when long term monitoring will be necessary, or when the benefits to the general public to be derived from reclamation activities on State owned lands would exceed the benefits from reclamation activities if the land were privately owned.

1) The Department Council will acquire only such interest or conservation rights in land which are necessary for successful reclamation.

2) Prior to acquisition the Department Council shall obtain from an independent professional appraiser an appraisal of the fair market value of the land or interest in land to be acquired. The appraisal shall state the fair market value of the land as adversely affected by past mining, and shall otherwise meet the quality of appraisal practices found in Regulation 10 of the American Institute of Real Estate Appraisers of the National Association of Realtors, Code of Professional Ethics, as amended November 4, 1984.

3) The Department Council shall obtain the prior written approval of the Federal Office before acquiring any land or interest in land with federal funds.

- b) The Department Council shall make every reasonable effort to acquire land by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past mining. If such efforts are not successful, land or interests in land may be acquired by condemnation.

c) The Department Council may accept donations of title to land or interest in land that are necessary for reclamation activities. A donation shall not be accepted if the terms or conditions of acceptance are inconsistent with the objectives or requirements of this part. If a donation is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. If reclamation activities are to be carried out with federal funds, the deed shall state that it is made "as a gift under the Federal Surface Mining Control and Reclamation Act of 1977." Offers to make a gift of land or interest in land shall include:

- 1) A statement of the interest which is being offered;

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- 2) A legal description of the land and a description of any improvements on it;
- 3) A description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor;
- 4) A statement that: --
  - A) The offeror is the record owner of the interest being offered;
  - B) The interest offered is free and clear of all encumbrances except as clearly stated in the offer;
  - C) There are no adverse claims against the interest offered;
  - D) There are no unredeemed tax deeds outstanding against the interest offered;
  - E) No person has a continuing responsibility under State or Federal law for reclamation.
- 5) An itemization of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered.

d) The Department Council shall be responsible for the management of lands acquired pursuant to this Section. The lands shall be used only for purposes which are consistent with the reclamation activities and are in accordance with the State Property Control Act [30 ILCS 605] (411--Rev--Stat--1957--ch--127--pars--133b1-et-seq.). Any user of land acquired under this Section shall be charged a use fee. The fee shall be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area, or the costs to the Department Council of providing the benefit, whichever is appropriate depending upon the particular circumstances of each case. If the Department Council finds, in writing, that a waiver of the use fee is in the public interest in a particular case, and states its reasons for such finding, the Department Council may so waive the fee. Unless otherwise provided by law, all fees collected shall be transmitted to the State Treasurer for deposit in the State fund currently entitled "Abandoned Mined Lands Reclamation Council Federal Trust Fund."

e) If the Department Council determines that it would be in the best interest of the State, the Department Council shall transfer administrative responsibility for land acquired under this Section to an agency or political subdivision of the State without cost to such agency or political subdivision. For land acquired with federal funds, such transfer must have the prior approval of the Federal Office. The agreement under which a transfer is made shall specify:

- 1) The purposes for which the land may be used, which purposes shall be consistent with the authorization under which the land was acquired;
- 2) That the administrative responsibility for the land will revert to the Department Council if, at any time, the land is not used

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for the purposes specified in the agreement.

f) When ownership of any lands acquired pursuant to this Section section is no longer necessary to further the goals of the Department Council, the Department Council shall notify the corporate authorities of the municipality in which such reclaimed lands are located and the county clerk of the respective county that the lands may be transferred for public use to one or more of such local governments who have complied with Section 2.07 of the State Act.

1) Upon receipt of plans for use of reclaimed lands from a unit or units of local government, the Department Council shall:

A) Publish a notice in the official newspaper and in a paper of general circulation in the area where the land is located for four successive weeks indicating that a plan has been submitted, and where a copy of the plan may be obtained. The notice shall provide at least 30 thirty days for public comment;

B) Make copies of the disposition plan available in the locality of the property and the Department's Council's offices;

C) If requested by any person, or if deemed advisable by the Department Council, conduct a public hearing to discuss the disposition plan. At least 30 thirty days notice of any such hearing will be published in a newspaper of general circulation in the area in which the land is located.

2) If the Department Council finds that the proposed disposition is appropriate considering all comments received and is consistent with any applicable local, State, or federal laws or rules, the Department Council shall transfer title for the affected lands to the unit or units of local government submitting the plan.

g) If disposal of lands under subsection (f) of this Section is determined by the Department Council not to be in the public interest, and if the reclaimed lands are suitable for industrial, commercial, residential, or recreational development consistent with local, State, or federal land use plans for the area in which the land is located, then the land may be sold for not less than fair market value under a system of competitive bidding which includes:

- 1) Publication of a notice once a week for 4 weeks in a newspaper of general circulation in the locality in which the land is located. The notice shall describe the land to be sold, state the appraised value, state any restrictive covenants which will be a condition of the sale, and state the time and place of the sale;
- 2) Provisions for sealed bids to be submitted prior to the sale date followed by an oral auction open to the public;
- 3) All moneys received from disposal of land under this Section section shall be transmitted to the State Treasurer for deposit in the State fund currently entitled "Abandoned Mined Lands Reclamation Council Federal Trust Fund."



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(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 2501.34 Emergency Abatement Activities

Notwithstanding any other Section of this Part, the Department ~~Council~~ will identify and immediately address sites which present an immediate threat to public health and safety, such as hazardous mine openings, methane gas leaks, deteriorating tippie structures, hazardous highwalls, mine fires, and mine subsidence. The finding by the Department ~~Council~~ that an immediate threat exists shall be in writing. The Department ~~Council~~ shall notify the owner and request consent prior to entry and abatement work. However, if the Department ~~Council~~ is unable to notify or secure a written consent prior to conducting abatement work, a written notice shall be given to the owner within two working days after entry. The appraisal required by Section 2501.25 shall be completed at the earliest practical time, but in any case before related nonemergency work is commenced. If federal funds are to be utilized for emergency reclamation activities on non-coal mined lands, the Department ~~Council~~ shall seek to have the Governor request such authorization from the Federal Office, as required by 30 CFR 875 (1983).

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 2501.37 Notice of Reclamation

a) *Following reclamation, the Department ~~Council~~ shall file a Notice of Reclamation in the office of the recorder in the county in which the reclaimed land lies. The Notice of Reclamation shall identify the land reclaimed, the adverse effects of past mining on the land, and briefly describe the reclamation. The Notice of Reclamation shall serve as perpetual notice to all concerned that the land has been mined and reclaimed, and provide that further information may be obtained by contacting the Department [20 ILCS 1920/2.12] ~~Council~~ ~~P-A-87-379~~.*

b) A Notice of Reclamation shall be filed only with respect to land that has been adversely affected with the physical impacts of mining, and will continue after reclamation to contain such physical effects even though reclaimed, including:

- 1) mine shafts, slope entries, or other mine openings
- 2) coal refuse and tailings
- 3) mine gas escape points
- 4) hazardous equipment or facilities
- 5) dangerous highwalls or embankments
- 6) spoil
- 7) acid water impoundments
- 8) dangerous impoundments or dam structures
- 9) subsidence pits or troughs.

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- c) A Notice of Reclamation shall not be filed in connection with land that is affected by reclamation activities only to provide ingress and egress, mobilization or staging areas, borrow or cover material, or other support activities.
- d) A Notice of Reclamation shall not be filed where all adverse effects, physical impacts, or remnants thereof are removed from the property by the reclamation.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 2501.40 Public Participation ~~(Repeated)~~

- a) Any interested person may submit information and comments regarding the AML program and projects at any time. Information and comments should be directed to the Director of the Department, the Director of the Office of Mines and Minerals, or the Manager of the AML Division.
- b) Verbal requests for information and written requests for information regarding the AML program shall be handled as expeditiously as possible. Requests made specifically pursuant to the Freedom of Information Act [5 ILCS 140] shall be made and handled in accordance with the generally applicable procedures of the Department of Natural Resources.
- c) Copies of the following publications shall be available upon request at the Department's Office at 300 W. Jefferson Street, Springfield, Illinois 62702.
  - 1) The Illinois State Reclamation Plan for Abandoned Mined Lands.
  - 2) Office of Mines and Minerals Annual and Bi-Annual Reports.
  - 3) Specific project reports which may be published for free distribution.
  - 4) Brochures and program materials which may be published for free distribution.
  - 5) The availability of such reports, brochures and program materials as may be prepared especially for free distribution shall not be deemed a waiver of the Department's right to charge fees reasonably calculated to reimburse its actual cost for reproducing and certifying public records requested pursuant to the Freedom of Information Act. The Department may charge fees reasonably calculated to reimburse its actual cost for providing multiple copies of free publications when multiple copies are requested.
- d) The Department shall hold such public meetings as it determines necessary and appropriate to advise the public of planned or ongoing AML projects, and to solicit input and participation in the AML program. Any interested person may request, in writing, that the Department hold a public meeting in connection with any AML project or program activity. Upon receipt of a written request to hold a public meeting, the Department shall contact the landowners directly involved



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in the project, as well as the local government bodies that may be interested. The Department shall schedule a public meeting if it determines that sufficient public interest exists to warrant the public meeting.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

- 1) Heading of the Part: Camping on Department of Natural Resources Properties
- 2) Code Citation: 17 Ill. Adm. Code 130
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
130.30	Amendments
130.70	Amendments
130.80	Amendments
130.90	Amendments
130.140	Amendments

- 4) Statutory Authority: Implementing and authorized by Sections 1 and 4(1) and (5) of the State Parks Act [20 ILCS 835/1, 4(1) and (5)], and by Sections 63a23 and 63a28 of the Civil Administrative Code of Illinois [20 ILCS 805/63a23 and 63a28].

- 5) A Complete Description of the Subjects and Issues Involved:

This Part is being amended to add information on Cabin Camp; add information on Rent-A-Camp Cabin areas; add language regarding the Department's check-in and check-out policies; and add language on the Department's pet and smoking policies.

- 6) Will this rulemaking replace any emergency rulemaking currently in effect? No

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Does this rulemaking contain incorporations by reference? No

- 9) Are there any other proposed rulemakings pending on this Part? No

- 10) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice to:

Jack Price  
Department of Natural Resources  
524 S. Second Street  
Springfield, IL 62701-1787  
217/782-1809

- 12) Initial Regulatory Flexibility Analysis:

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A) Types of small businesses, small municipalities and not for profit corporations affected: There is no effect to small businesses, small municipalities and not for profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance:  
None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rule was summarized: This rule was not included on either of the 2 most recent agendas because: The Department neglected to file a regulatory agenda on this Part.

The full text of the Proposed Amendments begins on the next page:

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TITLE 17: CONSERVATION  
CHAPTER 1: DEPARTMENT OF NATURAL RESOURCES  
SUBCHAPTER a: LANDS

PART 130  
CAMPING ON DEPARTMENT OF NATURAL RESOURCES PROPERTIES

Section	Location
130.10	Purpose of Campground
130.20	Classification of Camps by Equipment Used - Definitions
130.30	Definition of a Camp
130.40	Registrations
130.50	Permits, Extensions and Time Limits
130.60	Fees and Charges
130.70	Refunds
130.80	Check-in and Check-out Times
130.90	Unoccupied Camps
130.100	Vehicles per Camp (Refer to 17 Ill. Adm. Code Section 130.30)
130.110	Youth Group (Boy Scouts, Girl Scouts, Explorers, church groups, or others)
130.120	Organization Group Camps (charter organizations, ROTC, private clubs or others)
130.130	Campground Host Program
130.135	Use of Campground
130.140	Eviction
130.150	

AUTHORITY: Implementing and authorized by Sections 1, 4(1) and (5) of the State Parks Act [20 ILCS 835/1, 4(1) and (5)], and by Sections 63a23 and 63a28 of the Civil Administrative Code of Illinois [20 ILCS 805/63a23 and 63a28].

SOURCE: Adopted at 4 Ill. Reg. 7, p. 110, effective February 4, 1980; emergency amendment at 5 Ill. Reg. 5707, effective June 1, 1981 for a maximum of 150 days; codified at 5 Ill. Reg. 10623; amended at 5 Ill. Reg. 14568, effective December 9, 1981; amended at 6 Ill. Reg. 3840, effective March 31, 1982; amended at 6 Ill. Reg. 9626, effective July 21, 1982; amended at 6 Ill. Reg. 14835, effective November 24, 1982; amended at 7 Ill. Reg. 5870, effective April 22, 1983; amended at 8 Ill. Reg. 5647, effective April 16, 1984; amended at 9 Ill. Reg. 6173, effective April 23, 1985; amended at 9 Ill. Reg. 11594, effective July 16, 1985; amended at 10 Ill. Reg. 9777, effective May 21, 1986; amended at 10 Ill. Reg. 13244, effective July 28, 1986; amended at 11 Ill. Reg. 9506, effective May 15, 1987; amended at 14 Ill. Reg. 12402, effective July 20, 1990; emergency amendment at 16 Ill. Reg. 7925, effective May 11, 1992, for a maximum of 150 days; emergency expired October 8, 1992; amended at 16 Ill. Reg. 15982, effective October 2, 1992; amended at 18 Ill. Reg. 1126, effective January 18, 1994; amended at 19 Ill. Reg. 6462, effective April 28, 1995; amended at 20 Ill. Reg. 6683, effective May 6, 1996; amended at 21 Ill. Reg. 9034, effective June 26, 1997; amended at 22 Ill. Reg. 3076, effective January

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23, 1998; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 130.30 Classification of Camps by Equipment Used - Definitions

- a) Tent Camp - any camp using a fabric-type shelter erected on the ground, and not a part of a trailer unit as the basic unit that has been transported to the camp site by a motor vehicle.
- b) Trailer Camp - any camp which has a trailer, of not more than 40 feet in total overall length including any extensions forward or backward beyond the living quarters, as the basic shelter unit. This includes tent trailers, the standard travel trailer, or boats mounted on a trailer and used as the basic shelter unit.
- c) Vehicle Camp - any camp using a vehicle as the basic shelter unit. This includes converted buses, manufactured camper buses, and automobiles, of not more than 40 feet in total overall length, when used as the main sleeping and shelter unit of the camp.
- d) Primitive Camp - any camp using a shelter carried to a site via bicycle, canoe, horse or on the back of a camping member.
- e) Group Organization Camp - any camp using any one or combination of the various types of shelter when the camping group makeup qualifies as an organization camp, according to Sections 130.120 and 130.130.
- f) Boat Camp - any camp using a boat which is anchored off the area shore or tied on Department water frontage for shelter and sleeping. When the boat is placed on a camp site and used as a basic unit of the camp, it will then be classified as a trailer camp (subsection (b) above).
- g) Cabin Camp - any camp using a wooden-type shelter erected on a concrete pad as a permanent structure and within a campground.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

## Section 130.70 Fees and Charges

- a) The full amount of the camping fee and, if applicable, the utility fee shall be collected at the time the permit is issued. If checks are taken, they shall be made payable to the Illinois Department of Natural Resources and the site identified. Camping fees vary in accordance with the degree of campground development and type of facilities available effective May 11, 1992 as follows:

- 1) Spring - Summer Camping (May 1 through September 30)
  - A) Class A Sites: Camping fee of \$8.00 per night per site, \$3.00 utility fee. Sites having availability to showers, electricity and vehicular access.
  - B) Class B-E Sites: Camping fee of \$7.00 per night per site, \$3.00 utility fee. Sites having availability to electricity and vehicular access.

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- C) Class B-S Sites: Camping fee of \$8.00 per night per site. Sites having availability to showers and vehicular access.
- D) Class C Sites: Camping fee of \$7.00 per night per site. Sites having vehicular access or tent camp/primitive sites (walk-in or backpack) having availability to showers.
- E) Class D Sites: Camping fee of \$6.00 per night per site. Tent camping or primitive sites (walk-in or backpack) with no vehicular access.
- F) Youth Group Camping: \$1.00 per person, minimum daily camping fee of \$10.00.
- G) Adult Group Camping: \$3.00 per person, minimum daily camping fee of \$30.00.
- H) Each member of an organized group utilizing facilities furnished at Dixon Springs State Park and Pere Marquette State Park shall pay a fee of \$4.00 per night. At Dixon Springs, a deposit of \$40.00 will be required before confirmation of a reservation. At Pere Marquette, a deposit of \$100 will be required before confirmation of a reservation. The deposits will be credited to the total camping fee. Fees for day use of the group camps at Dixon Springs and Pere Marquette shall be \$45.00 per day.
- I) Rent-A-Camp Sites will be made available at designated state parks and recreational areas throughout the department's statewide system. Rent-A-Camp Tent these-designated areas will provide, at additional fees of \$8.00 and \$12.00 per night, one large tent (approximately 10' x 13') or one extra large tent (approximately 14' x 14'), respectively (erected), with wood floor, one charcoal grill, one picnic table, one trash barrel, and either 4 sleeping cots per large tent or 8 sleeping cots per extra large tent. The total overnight fee for a rent-a-camp will be based on the basic fees given of \$8.00 or \$12.00 per night in addition to the fee for the class of the camping site A through D on which the rent-a-camps are located, as follows:
  - i) Rent-A-Camp Tent at Class A Sites:
    - \$16.00 or \$20.00 plus \$3.00 utility fee per night per site at all sites having availability to showers, electricity and vehicular access.
  - ii) Rent-A-Camp Tent at Class B-E Sites:
    - \$15.00 or \$19.00 plus \$3.00 utility fee per night per site at all sites having availability to electricity and vehicular access.
  - iii) Rent-A-Camp Tent at Class B-S Sites:
    - \$16.00 or \$20.00 per night per site at all sites having availability to showers and vehicular access.
  - iv) Rent-A-Camp Tent at Class C Sites:
    - \$15.00 or \$19.00 per night per site at all sites having vehicular access.



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- v) Rent-A-Camp Tent at Class D Sites:  
\$14.00 or \$18.00 per night per site at all sites having tent camping or primitive sites (walk-in or backpack) with no vehicular access.
- U) Rent-A-Camp Cabin areas will provide, at an additional fee of \$24.00 per night, one two-bedroom cabin with two bunk beds, one full-sized bed, ceiling fan, electric heater, drop leaf table with two chairs, one charcoal grill, one picnic table, and one trash barrel. The total overnight fee for a Rent-A-Camp Cabin will be based on the basic fee of \$24.00 per night in addition to the fee for the class of the camping site on which the Rent-A-Camp Cabins are located, as follows:

Rent-A-Camp Cabins at Class A Sites:  
\$24.00 cabin rental plus \$3.00 utility fee and \$8.00 camping fee per night, per site at all sites having availability to showers, electricity and vehicular access.

K) At A \$5.00 per campsite non-refundable fee must be remitted at those facilities offering reservation services. This fee applies to reservations for group camp sites as well as individual site reservations and individual Rent-A-Camp Cabin reservations. At Starved Rock State Park, the reservation fee shall be the applicable first night's camping and utility fee in addition to the \$5.00 per campsite non-refundable fee and is required at the time reservations are made for individual campsite reservations.

The Rent-A-Camp Cabin reservation fee for each cabin will be the applicable first night's cabin rental, camping and utility fees, in addition to the \$5.00 per campsite non-refundable reservation fee, and is required at the time reservations are made for individual Rent-A-Camp Cabin campsites.

## 2) Fall - Winter Camping (October 1 through April 30)

- A) As long as buildings, water and electrical service are available, regardless of the date, the regular camping fee will apply.
- B) When cold weather requires closing down buildings and shutting off water in Class A campgrounds, the fee shall be reduced commensurate with the services and facilities available for use.
- C) The fee for primitive campsites shall be \$6.00 per site. When a change in facilities is made and a campsite is reclassified, the fee for a site will change automatically.

## b) Exceptions: Employees, Concessionaires, and Special Legislation

- 1) Except for temporary employees of the Department of Natural Resources who qualify and are placed in the campground host program at approved camping sites, employees of the Department of Natural Resources or any other State agency, regardless of their

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official status, will be required to pay the established camping fee.

- 2) The concessionaire, manager, or a responsible employee designated by the concessionaire will not be charged the regular camping fee. Rent will be paid at the rate established by the Department or pursuant to the concession lease.

- 3) An Illinois resident age 62 or older, or a person who has a Class 2 disability as defined in Section 4A of the Illinois Identification Card Act [15 ILCS 335/4A] or a disabled veteran, or a former prisoner of war as defined in Section 5 of the Department of Veterans Affairs Act [20 ILCS 2805/5], is entitled to the following camping fee provisions, upon qualifying, which will allow the spouse or minor (under 18) children, or minor grandchildren to be included in the camping party. All other members must be registered and pay the regular camping fee for the facilities provided.

A) Illinois residents age 62 or older will be charged one-half the established camping fee on any Monday, Tuesday, Wednesday or Thursday, at Class A and B sites but must pay the entire established camping fee on all sites on any Friday, Saturday or Sunday, and, if at a site with utilities, must pay the entire utility fee for each day of camping. Verification of age may be made by any document required by law to establish proof of age and date of birth and issued by a federal or state governmental agency. No fee on Class C and D sites Monday through Thursday.

B) Illinois residents who have a Class 2 disability and present a current Illinois Disabled Person Identification Card issued by the Secretary of State will be charged one-half the established camping fee for Class A and B sites on any Monday, Tuesday, Wednesday, or Thursday, but must pay the entire established camping fee for any Friday, Saturday or Sunday, and, if at a site with utilities, must pay the entire utility fee for each day of camping. No fee on Class C and D sites.

C) An Illinois resident who is a disabled veteran, or former prisoner of war may camp without being charged a camping fee, but if at a site with utilities, must pay the entire utility fee for each day of camping. An individual wishing to qualify for free camping under the provisions stated above must be able to submit the appropriate document issued by the Illinois Department of Veterans' Affairs (see 20 ILCS 2805/5).

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- a) A refund of camping and utility fees for unused time shall be made upon the request of the registered camper. No personal check refunds shall be made sooner than 10 days after the check has been deposited to insure clearance. Refunds will be made in the field out of current cash receipts. Refunds for Camper's Permit will be prepared and appropriate copies submitted to accounting.
- b) Refund forms must be completed whenever a camper requests a refund for the unused portion of this camping permit.
- c) The person requesting the refund must show identification at the time of the refund.
- d) The camper's copy of the permit must be surrendered at the time of the refund.
- e) Rent-A-Camp reservation deposits will not be refunded by the Department.
- f) No refunds will be made for reservation fees unless the campground is closed by the Department.
- g) The deposit required for organized group camps at Pere Marquette and Dixon Springs will be non-refundable unless notice of cancellation is received by 30 days prior to reservation date.
- h) There is no refund of the first night's cabin fee or camping and utility fee made as part of a campsite reservation that is canceled less than 3 days prior to the date of arrival.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 130.90 Check-in and Check-out Times

- a) Check-in times are normally from 7:00 a.m. until 10:00 p.m. Late check-in will be allowed providing camping space is available, when site staff is available or to help avert emergencies. Rent-A-Camp Cabins may not be available for occupancy until 3:00 p.m. due to additional time needed to clean units.
- b) Check-out time is 3:00 p.m. with the exception of Rent-A-Camp Cabins which is 11:00 a.m.
- 1) If a camper has checked out and desires to remain in the area for other purposes after the check-out time, he must break camp and move from the campground.
  - 2) The camper shall remove all personally owned camping equipment from the campground at the time the camper leaves.
  - 3) Failure to remove camping equipment by 3:00 p.m. (or by 11:00 a.m. for Rent-A-Camp Cabins) without specific authorization by Department of Natural Resources' staff shall obligate the camper to pay an additional night's fees. The camper may elect to stay the additional night if such use does not violate time limits and if space is available.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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\_\_\_\_\_)

## Section 130.140 Use of Campground

- a) Campsites shall not be used for large group gatherings or parties.
- b) The use of a registered motor vehicle in a campground is only for the purpose of establishing a camp and for transportation in and out of the campground.
- c) Quiet hours shall prevail in the campground between 10:00 p.m. and 7:00 a.m. Generators, machinery or mechanical equipment, including radios, C.B.'s, phonographs or television devices shall not emit sound or light outside the individual's immediate campsite or pad after 10:00 p.m. or before 7:00 a.m. daily that would be disturbing to other campers. No person shall at any time use outside electronic equipment or electrical speakers at a volume which emits sound beyond the immediate camp or picnic site without specific permission of the Site Superintendent.
- d) Fires are allowed in stoves or designated areas only. Large bonfires are not permitted without permission of the Site Superintendent.
- e) Pets - The camper is responsible for all dogs, cats or other small animals under his ownership or care. No pets will be allowed in the interior of Rent-A-Camp Cabins. All animals must be on a leash not to exceed ten-10 feet. All leashed animals shall be at all times under the direct control of the owner or person designated by the owner. Animals are not to be left unattended. Owners are responsible to make sure that their animal(s) do not cause a nuisance to other campers as determined by Department personnel. Excrement of these pets shall be removed from the campsite by the owner. Disposal shall be made directly into a department garbage container with tight fitting lid, or excrement shall be placed in a water tight bag that has been closed or a water tight container with lid closed and placed in a department trash receptacle.
- f) Smoking - Smoking is not allowed in cabins designated as no smoking.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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1) Heading of the Part: Selection of Contractors and Consultants For Abandoned Mined Lands Reclamation Projects

2) Code Citation: 44 Ill. Adm. Code 1150

3) Section Number: Proposed Action:

- 1150.10 Amend
- 1150.20 Amend
- 1150.30 Amend
- 1150.50 Amend
- 1150.100 Amend
- 1150.200 Amend
- 1150.300 Amend
- 1150.400 Amend
- 1150.500 Amend
- 1150.600 Amend
- 1150.700 Amend
- 1150.800 Amend
- 1150.900 Amend
- 1150.1000 Amend
- 1150.1100 Amend
- 1150.1200 Amend
- 1150.1300 Amend
- 1150.1325 New
- 1150.1350 New
- 1150.1400 Amend
- 1150.1500 Amend

4) Statutory Authority: Implemented and authorized by the Abandoned Mined Lands and Water Reclamation Act [20 ILCS 1920].

5) A complete description of the subjects and issues involved: The proposed amendments prescribe procedures for advertising, bidding and awarding contracts which satisfy the requirements of the various State of Illinois purchasing laws as well as federal grant requirements. These amendments also update the rules to reflect the Abandoned Mined Lands Reclamation Council conversion into the Department of Natural Resources.

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed amendments will have no impact upon local units of government

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11) Time, Place, and Manner in which interested persons may comment on this Proposed rulemaking: Written comments may be submitted within 45 days after the publication of this notice to:

Peggy J. Witt, Legal Counsel  
Illinois Department of Natural Resources  
524 South Second Street  
Springfield IL 62701  
(217)782-1809

The Department will hold a public hearing on the proposed rulemaking on May 7, 1998, at the Illinois Department of Natural Resources located at 300 West Jefferson, Ste. 300, Springfield, Illinois at 10:00 a.m. Representatives of small businesses are encouraged to comment about the impact of the proposed rulemaking at this public hearing.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: The Department neglected to file a regulatory agenda for this Part.

The full text of the Proposed Amendments begins on the next page:



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TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT AND  
PROPERTY MANAGEMENT

SUBTITLE B: SUPPLEMENTAL PROCUREMENT RULES  
CHAPTER XV: DEPARTMENT OF NATURAL RESOURCES ABANDONED-MINED-LANDS  
RECLAMATION-COUNCIL

PART 1150  
SELECTION OF CONTRACTORS AND CONSULTANTS FOR ABANDONED MINED LANDS  
RECLAMATION PROJECTS

SUBPART A: GENERAL PROVISIONS

- Section  
1150.10 Purpose  
1150.20 Scope  
1150.30 Applicability  
1150.40 Severability  
1150.50 Incorporation by Reference

SUBPART B: STANDARD CONSTRUCTION CONTRACTS

- Section  
1150.100 Definition of Terms  
1150.200 Bidding Requirements and Conditions  
1150.300 Award and Execution of Contract  
1150.400 Contracts Involving an Expenditure of \$30,000 \$57,000-00 or Less

SUBPART C: EMERGENCY CONSTRUCTION CONTRACTS

- Section  
1150.500 Emergency Contracting  
1150.600 Pre-Bidding Emergency Work

SUBPART D: PROFESSIONAL SERVICES CONSULTANT-SHAREPTION-PROGHSS

- Section  
1150.700 Applicability  
1150.800 Prequalification  
1150.900 Subcontracting  
1150.1000 Requests for Proposals  
1150.1100 Evaluation Procedure Staff-Technical-Evaluation  
1150.1200 Selection Procedure Project-Selection  
1150.1300 Contract Negotiations Criteria-for-Consultant-Selection  
1150.1325 Exemptions  
1150.1350 Firm Performance Evaluations  
1150.1400 Complaint Procedure  
1150.1500 Equal Employment Opportunity; Nondiscrimination; Affirmative Action

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AUTHORITY: Implementing and authorized by the Abandoned Mined Lands and Water  
Reclamation Act [20 ILCS 1920].

SOURCE: Adopted at 9 Ill. Reg. 6661, effective May 1, 1985; emergency  
amendment at 10 Ill. Reg. 1264, effective January 1, 1986, for a maximum of 150  
days; emergency expired May 30, 1986; amended at 10 Ill. Reg. 12534, effective  
July 8, 1986; amended at 22 Ill. Reg. \_\_\_\_\_,

SUBPART A: GENERAL PROVISIONS

Section 1150.10 Purpose

The Abandoned Mined Lands and Water Reclamation Act ("Act") [20 ILCS 1920]  
[111-Rev-Stat-1985-ch-96-1/27-pars-0001-01-et-seq-] provides that the  
Illinois Department of Natural Resources Abandoned-Mined-Lands-Reclamation  
Council ("Council") shall administer a program for the reclamation of abandoned  
lands and waters in accordance with the Act. This Part describes standard  
procedures for the Department's Office of Mines and Minerals, Division of  
Abandoned Mined Lands Reclamation, for advertising, bidding and awarding  
contracts for construction on abandoned mined lands ("AML") reclamation  
projects. This Part also prescribes standard procedures for obtaining the  
necessary outside professional services as needed in the administration of the  
AML program. The purpose is to prescribe procedures which will implement the  
AML program in a way which satisfies the requirements of the various State of  
Illinois purchasing laws, as well as federal grant requirements for funding  
pursuant to the Surface Mining Control and Reclamation Act of 1977, as amended  
[30 USC 1201 et seq.]. This Part sets forth and establishes standard  
specifications and procedures for the Council for construction contracts and  
consultant selection under the abandoned-mined-lands-program-and-emergency  
program.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective  
\_\_\_\_\_)

Section 1150.20 Scope

This Part encompasses selection of contractors and consultants. The Rules in  
this Part are non-conflicting supplements to the Standard Procurement Rules as  
amended (44 Ill. Adm. Code 1), promulgated by the Department of Central  
Management Services, and all activities and interpretations shall be performed  
to give effect to both sets of rules. Procurement of other goods and services  
shall be in accordance with the Standard Procurement Rules as amended,  
promulgated by the Department of Central Management Services.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective  
\_\_\_\_\_)

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Section 1150.30 Applicability

- a) General  
This Part applies to all contracts for reclamation construction and professional services required by the Division of Abandoned Mined Lands Reclamation.
- b) Standard Construction Contracts  
Subpart B applies to the advertising, bidding and awarding of contracts for construction on reclamation projects that have been planned and designed in the normal course of the AML program.
- c) Emergency Construction Contracts  
Subpart C applies to construction contracts that are necessary to abate emergency conditions which involve a danger to public health and safety and that cannot await abatement under normal program procedures.
- d) Professional Services  
Subpart D applies to the selection of Consultants to provide professional services covered by the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535].

Subpart--B applies to contractor selection for reclamation projects planned and designed in the regular course of the abandoned mined lands program. The provisions of Subpart--B also apply to contractor selection for emergency projects to the extent not otherwise provided for in Subpart--E. Subpart--E deals with contractor selection on projects for the abatement of abandoned mine conditions which involve a danger to public health and safety and cannot await abatement under normal procedures. Subpart--D sets forth the procedures and criteria for the selection of consultants for individual projects wherein the fees for consultant services will exceed \$57,000.00.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 1150.50 Incorporation by Reference

No incorporation by reference in this Part pursuant to Section 5-75 of the Illinois Administrative Procedure Act [5 ILCS 100/5-75] (Ill. Rev. Stat. 1991, ch. 127, par. 1005-75) contains any later amendment or edition.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART B: STANDARD CONSTRUCTION CONTRACTS

Section 1150.100 Definition of Terms

Wherever in this Part the following terms or pronouns in place of them are used, words importing the masculine may be applied to females, and the intent and meaning shall be interpreted as follows:

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"Advertisement" - The public announcement, as required by law Section 4-of-the-Illinois-Purchasing-Act-(Ill.-Rev.-Stat.-1905, ch. 127, par. 132-4), inviting bids for work to be performed or materials to be furnished.

"AML" - Abandoned Mined Lands; of or pertaining to the Abandoned Mined Lands Reclamation program.

"AVS" or "Applicant Violator System" - The computer system maintained by OSM, in accordance with 30 CFR 773, to identify ownership of control links involving coal mining permit applicants, permittees, and persons cited in violation notices.

"Award" - The decision of the Department in the form of a letter of intent Council to accept the proposal of the lowest responsive and responsible bidder for the work, subject to the execution and approval of a satisfactory contract therefor and bond to secure the performance thereof as required by this Part, and to such other project-specific conditions as may be specified. A responsible bidder is a bidder who meets the standards set forth in 44 Ill. Adm. Code 1: Subpart H.

"Bid" - a Contractor's proposal.

"Bidder" - Any individual, firm, partnership or corporation submitting a proposal for the work contemplated, acting directly or through a authorized representative.

"Calendar Day" - Every day shown on the calendar.

"Contract" - The written Agreement between the Department Council and the Contractor setting forth the obligations of the parties to the contract thereunder, including, but not limited to, the performance of the work, the furnishing of labor and materials, and the basis of payment. The contract includes the invitation for bids, proposal, letter of award, contract form and contract bond, Specifications, Supplemental Specifications, Special Provisions, general and detailed plans, and any Agreements that are required to complete the construction of the work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

"Contract Bond" - The approved form of security approved pursuant to Section 1150-900(d), furnished by the Contractor and his/her surety as a guaranty that the contractor he will execute the work in accordance with the terms of the contract.

"Contractor" - The individual, firm, partnership or corporation contracting with the Department Council for performance of prescribed work.

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"Council" - The Abandoned-Mined-Bands-Reclamation-Council-of-the-State of Illinois-with-principal-offices-of-business-at-Springfield-

"Department" - The Department of Natural Resources, Office of Mines and Minerals, Division of Abandoned Mined Lands Reclamation, of the State of Illinois, with principal offices of business at Springfield.

"Department of Transportation" - The Department of Transportation of the State of Illinois with principal offices of business at Springfield.

"Equipment" - All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and acceptable completion of the work in accordance with contract specifications.

"Executive-Director" - The Executive-Director-of-the-Abandoned-Mined-Bands-Reclamation-Council-of-the-State-of-Illinois-or-that-person's authorized-representative-limited-by-the-particular-duties-entrusted-to-the-representative

"Invitation for Bids" - The advertisement for proposals for all work or materials on which bids are required. Such advertisement will indicate with reasonable accuracy the quantity and location of the work to be done or the character and quantity of the material to be furnished and the time and place of the opening of proposals.

"Materials" - Any substances specified for use in the construction of the project and its appurtenances.

"OSM" - The Office of Surface Mining, Reclamation and Enforcement, United States Department of the Interior.

"Pay Item" - A specifically described unit of work for which a price is provided in the contract.

"Plans" - The approved plans, profiles, typical cross sections, working drawings and supplemental drawings, or exact reproductions thereof, approved by the Council, which show the location, character, dimensions and details of the work to be done.

"Proposal" - The offer of a bidder, on the prescribed form, to perform the work and to furnish the labor and materials at the prices quoted. In Subpart D, "Proposal" means the letter of interest and designated portions of the Consultant's Qualifications Packet submitted to the Department for consideration by the Department in selecting Consultants to provide professional services.

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"Proposal Guaranty" - The security furnished with a bid to guarantee that the bidder will enter into the contract if his/her bid is accepted.

"Special Provisions" - Additions and revisions to the Standard and Supplemental Specifications covering conditions peculiar to an individual project.

"Specifications" - The body of directions, provisions and requirements contained in "Standard Specifications for Road and Bridge Construction" adopted by the Department of Transportation, or in any supplement adopted by the Department of Transportation, together with written agreements and all documents of any description made or to be made pertaining to the method or manner of performing and paying for the work, the quantities, or the quality of materials to be furnished under the contract.

"State" - The State of Illinois acting through the Department of Natural Resources, Office of Mines and Minerals, Division of Abandoned Mined Lands Reclamation Abandoned-Mined-Bands-Reclamation-Council, or such agency or department of State Government as the Department Council may designate.

"Structure" - Unless otherwise defined in the Specifications, structures shall comprise all objects constructed of materials other than earth, required by the contract to be built or to be removed.

"Subconsultant" - An individual, firm, partnership, or corporation who, with the written consent of the Department, assumes obligation for performing specified professional services.

"Subcontractor" - An individual, firm, partnership, or corporation who, with the written consent of the Department, assumes obligation for performing specified contract work.

"Supplemental Specifications" - Additions and revisions to the Standard Specifications for Road and Bridge Construction of the Illinois Department of Transportation, as modified and referenced in the proposal and contract.

"Surety" - The corporation, partnership or individual, other than the Contractor, executing the Contract Bond.

"Work" - Work shall mean the furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the project and the carrying out of all the duties and obligations imposed by the contract.



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(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1150.200 Bidding Requirements and Conditions

## a) Prequalification of Bidders

- 1) Each bidder shall be prequalified by the Department of Transportation and eligible to bid as provided in 44 Ill. Adm. Code 650 and described in Section 102 of the Standard Specifications for Road and Bridge Construction published by the Department of Transportation. Application for prequalification shall be made directly to the Department of Transportation.
- 2) The Department Council shall rely upon any determination and statement by the Department of Transportation that a bidder is not qualified or that the bidder's qualification has been suspended, without additional inquiry or verification. Any appeal, challenge, or dispute by a bidder relating to an adverse determination of the Department of Transportation shall be made to the Department of Transportation.
- 3) No error in any determination of a bidder's qualifications made by the Department of Transportation shall invalidate any decision of the Department of Natural Resources Council.
- 4) Independent of any determination by the Department of Transportation, the Department of Natural Resources Council by and through the Executive Director of the Office of Mines and Minerals may declare a contractor ineligible for reclamation project contracts and suspend that contractor's eligibility for up to one year. The Contractor shall be sent written Notice of the Department's action. The Executive Director shall send Notice of the Council's action to the Contractor. The following shall be sufficient grounds for suspension:
  - A) Material breach of contract.
  - B) Delivery of materials or performance of services which do not comply with the specifications of the contractor's contract with the Department Council or any other State agency or department.
  - C) Failure to perform within the time specified in the contract.
  - D) Failure to keep offer firm for length of time specified by the bidder in his/her bid.
  - E) Failure to provide performance bond when required by invitation for Bids.
  - F) Collusion with other bidders or prospective bidders to restrain competitive bidding.
  - G) Giving information in an application for inclusion on a bidder's list that is later found to be false or materially misleading.
  - H) Any substitution of materials, even though of the same

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- quality, without first securing the written consent of the State ~~Executive Director~~.
- I) Bankruptcy or other evidence of insolvency of the bidder, such as the failure to timely pay suppliers and sub-contractors.
  - J) Revocation of the Department of Human of Rights Public Contract number.
  - K) Failure to provide prevailing wages and benefits where required by law (Prevailing Wage Act [820 ILCS 130]) #29 EPR-3-and-57-(January-17-1995)).
  - L) Non-compliance with Equal Employment Opportunity contract provisions.
  - M) A recommendation from OSM that the contractor is not eligible for an AML contract under 30 CFR 874.16.
- 5) In all actions suspending a contractor's eligibility to bid on reclamation project contracts, the Contractor may protest the Department's Council's action by submitting to the Executive Director of the Department a written statement of objection setting forth the facts and circumstances of the action which are alleged to be legally or otherwise objectionable. The written statement of objection must be received by the Executive Director within 14 calendar days after of the objectionable action. The Director shall provide the Contractor with a hearing in accordance with procedures set forth in 17 Ill. Adm. Code 2530. Notwithstanding the provisions of Sections 2530.320 - 2530.350 concerning initiation of proceedings by the Department, the Contractor shall initiate the proceedings. After investigation by the Council, the Executive Director will issue a written response. ~~The Contractor may then request a meeting within seven calendar days of receipt to refute the Council's findings. The parties may each question the other on matters pertaining to the action. The Council, by and through the Executive Director, shall issue a final decision within 21 days of the meeting. This is a final decision for purposes of the Administrative Review Law (Ill. Rev. Stat. 1905, ch. 110, par. 3-101 et seq.).~~

## b) Notice to Bidders

- 1) Notice to Bidders and advertisement for bids shall be published in the Illinois Procurement Bulletin "Official Newspaper" of the State of Illinois, inviting bids for the construction projects for which competitive bids may be received and which are in any one letting. Advertisements must appear at least once, no less than 14 days before the bid opening ~~three times with the first and last at least 10 days apart~~. The notice shall specify the date, time and place where bids are due; the date, time and place where the bids will be opened; and the place where proposal forms may be obtained; the responsible State purchasing officer; the method of source selection; and information of how to obtain a comprehensive purchase description and any disclosure and

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contract forms.

- 2) The Illinois Procurement Bulletin "Official Newspaper" of the State of Illinois for the Department will be the volumes published by the Department of Transportation ~~is the one so designated by the Department of Central Management Services.~~
- 3) A notice of all construction projects for which the Department ~~is~~ accepting bids at a Department of Transportation letting shall be published in the Illinois Procurement Bulletin ~~Department of Transportation "Service Bulletin"~~, at least 14 days prior to the time bids are due. The Bulletin is sent to all contractors who have prequalified with the Department of Transportation and to persons paying the established subscription price.

## c) Contents of Proposal Forms

- 1) Upon request, the Department of Transportation will furnish the prequalified, prospective bidders a proposal form. This form will state the location and description of the contemplated construction and will show the estimate of the various quantities and kinds of work to be performed and/or materials to be furnished, and will have a schedule of items for which unit bid prices are invited. The proposal form will state the time in which the work must be completed, the amount of the proposal guaranty, labor requirements, and the date, time, and place of the opening of proposals. The form will also include Special Provisions and requirements that adapt the Standard Specifications to AML projects and provide for project specific conditions and requirements. Upon request, prequalified prospective bidders will be furnished a proposal by the Department of Transportation, this document will state the location and description of the contemplated project, will provide an estimate of quantities and kinds of work to be performed or materials to be furnished, and will include special provisions, specifications and plans which describe the proposed work. The proposal form will state the time in which the work must be completed, the amount of the proposal guaranty, labor requirements, and the date, time and place of the bid opening.
- 2) All papers bound with or attached to the proposal form are considered a part thereof and must not be detached or altered when the proposal is submitted.
- 3) The plans, specifications and other documents designated in the proposal form, including any addenda officially issued by the Department, ~~will~~ be considered a part of the proposal, whether attached or not.

## d) Issuance of Proposal Forms

- The Department ~~is~~ shall direct the Department of Transportation to refuse to issue a proposal form for any of the following reasons:
- 1) Lack of competency and adequate machinery, plant and other equipment, as revealed by the financial statement and experience

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questionnaires required by the prequalification procedures of the Department of Transportation.

- 2) Uncompleted work which, in the judgment of the Department ~~is~~ or the Department of Transportation, might hinder or prevent the prompt completion of additional work if awarded.
- 3) False information provided in the bidder's "Affidavit of Availability".
- 4) Failure to pay, or satisfactorily settle, all bills due for labor and material on former contracts in force at the time of issuance of proposal forms.
- 5) Failure to comply with any prequalification procedures of the Department of Transportation.
- 6) Default under previous contracts.
- 7) Unsatisfactory performance record as shown by past work, judged from the standpoint of workmanship and progress.
- 8) When the Contractor is suspended from eligibility to bid at a public letting where the contract is awarded by, or requires approval of, the Department of Transportation.
- 9) When any agent, servant or employee of the prospective bidder currently serves as a member, employee or agent of a governmental body that is financially involved in the proposed work.
- 10) When any agent, servant or employee of the prospective bidder has participated in the preparation of plans or specifications for the work.

## e) Amendment of Proposal Form

- 1) At any time prior to the time when proposals are due, the Department ~~is~~ may amend the proposal form by deleting or adding items, changing quantities of any item, altering specifications or other elements of the proposal forms. In the event of a change of the proposal form, the Department ~~is~~ shall notify all persons who have received proposal forms or have otherwise notified the Department of Transportation of an intention to submit a proposal, and shall, prior to the time proposals are due, provide all such persons with an amended proposal form. Any bidders who have already submitted a proposal shall be allowed to withdraw, resubmit or amend their proposal notwithstanding the provisions of subsection (m) of this Section. In amending a proposal form, the Department ~~is~~ shall extend the time when the proposals are due when it determines that additional time will be required to compensate for the amendments.
- 2) Unless the changes are so substantial that the initial invitation for bids no longer reflects an accurate estimate of the quantity of the work to be done or the character and quantity of the material to be furnished, no new invitation or advertisement shall be required.

## f) Interpretation of Quantities in Bid Schedule

- 1) The quantities appearing in the bid schedule are approximate and are



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prepared for the comparison of bids. Payment to the Contractor will be made only for actual quantities of work performed and accepted or materials furnished in accordance with the contract, unless bid quantities are accepted by both the Department Council and Contractor ~~contractor~~. The scheduled quantities of work to be done and materials to be furnished may each be increased, decreased, or omitted as provided in this Section.

g) Examination of Plans, Specifications, Special Provisions and Site of Work

1) The prospective bidder shall, before submitting a his bid, carefully examine the ~~proposal-form, plans, specifications, and special provisions~~ of the contract. The bidder shall inspect in detail the site of the proposed work, investigate and become familiar ~~and familiarize himself~~ with all the local conditions affecting the contract and fully acquaint itself with the detailed requirements of construction. Submission of a bid shall be a conclusive assurance and warranty that the bidder has made these examinations and that the bidder understands all requirements for the performance of the work. If his/her bid is accepted, the bidder will be responsible for all errors in the his proposal resulting from his/her failure or neglect to comply with this subsection (g)(1) ~~these instructions~~. The Department will, in no case, be responsible for any costs, expenses, losses or change in anticipated profits resulting from such failure or neglect of the bidder to make these examinations. ~~In no case will the Council be responsible for any change in anticipated profits resulting from such failure or neglect.~~

2) The bidder shall take no advantage of any error or omission in the proposal and advertised contract. Any prospective bidder who desires an explanation or interpretation of the plans, specifications or any of the contract documents shall request an explanation or interpretation in writing from the Supervisor of Project Management in sufficient time to allow a written reply by the Department that can reach all prospective bidders before submission of their bids. Any reply given a prospective bidder concerning any of the contract documents, plans, and specifications will be furnished to all prospective bidders in the form determined by the Department including, but not limited to, an addendum, if the information is deemed by the Department to be necessary in submitting bids or if the Department concludes that the information would aid competition. Oral explanations, interpretations, or instructions given before the submission of bids, unless at a prebid conference, will not be binding on the Department.

h) Preparation of the Proposal

1) Bidders ~~the bidder~~ shall submit their proposals ~~his proposal~~ on the form furnished by the Department of Transportation. The proposal shall be executed, and bids shall be made for all items

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indicated in the proposal form, except that when alternative bids are asked a bid on more than one alternate for each item is not required, unless otherwise provided. The bidder shall indicate, in figures, a unit price for each of the separate items called for in the proposal form; the bidder shall show the products of the respective quantities and unit prices in the column provided for that purpose, and the gross sum shown in the place indicated in the proposal form shall be the summation of those said products. All writing shall be with ink or typewriter, except the signature of the bidder, which shall be written in with ink.

2) If the proposal is made by an individual, that individual's his name and business address shall be shown. If made by a firm or partnership, the name and business address of each member of the firm or partnership shall be shown. If made by a corporation, the proposal shall show the names, titles, and business addresses of the president, secretary, and treasurer, and the seal of the corporation shall be affixed and attested by the secretary.

i) Combination Bids

1) A combination bid is a total bid received on two or more proposals. No combination bids other than those specifically set up by the Department ~~specified by the Council in the proposal forms~~ will be considered. Separate proposal forms will be issued for each project in the combination so that bids may be submitted either on the combination or on separate units of the combination. The Department Council reserves the right to make awards on combination bids or separate bids to the best advantage of the Department Council. ~~Provisions in the proposal-form shall govern combination bidding.~~

2) If a combination bid is submitted on 2 or more proposals, separate proposals on each individual contract shall also be submitted, and unless separate proposals are so submitted, the combination bid will not be considered. If the bidder desires to submit a combination bid, the bidder shall state, in the place provided in the proposal form, the amount of the combination bid for the entire combination.

3) If a combination bid is submitted on any stipulated combination, and errors are found to exist in computing the gross sum bid on any one or more of the individual proposals, corrections shall be made by the Department and the amount of the combination bid shall be corrected so that it will be in the same proportion to the sum of the corrected gross sum bid as the combination bid submitted was to the sum of the gross sum bid submitted. The following provisions shall govern combination bidding:

A) A combination bid which is submitted for 2 or more proposals and awarded on that basis shall have the bid prorated against each proposal in proportion to the bid submitted for each proposal.

B) Separate contracts shall be executed for each individual



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C) Proposal included in the combination.

The completion date for all contracts awarded on a combination bid shall be the latest completion date designated in any one or more of the contracts included in the combination, unless otherwise provided in the contracts. The working days for all contracts awarded on a combination bid shall be the largest number of working days designated in any one or more of the contracts included in the combination, unless otherwise provided in the contracts.

D) An extension of time for any one or more contracts awarded on a combination bid shall automatically extend all contracts awarded on the combination.

E) In the event the Contractor fails to complete any one or all of the contracts on the combination bid by the contract completion date plus any authorized extension, or the contract working days plus any authorized extension, the liquidated damages shall be determined from the schedule of deductions for each day of overrun in contract time as provided in the contract, based on the combination bid total, and shall be computed on the combination and prorated against the 2 or more individual contracts based on the dollar value of each contract.

F) The Plans and Special Provisions for each separate contract shall be construed separately for all requirements, except as described in subsections (a) through (e) above.

j) Rejection of Proposals

The Department Council reserves the right to reject proposals where the bidder has failed to meet the prequalification requirements of the Department of Transportation, or for any of the following reasons:

- 1) More than one proposal for the same work from an individual, firm, partnership, or corporation under the same or different names.
- 2) Evidence of collusion among bidders.
- 3) Unbalanced proposals in which the bid prices for some items are obviously out of proportion to the bid prices for other items.
- 4) If the proposal does not contain a unit price for each pay item listed, except in the case of authorized alternate pay items or lump sum pay items.
- 5) If the proposal form is other than that furnished by the Department of Transportation; or if the form is altered or any part thereof is detached.
- 6) If there are omissions, erasures, alterations, unauthorized additions, conditional or alternate bids, or irregularities of any kind which may tend to make the proposal proposed incomplete, indefinite or ambiguous.
- 7) If the bidder adds any provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.

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- 8) If the proposal is not accompanied by the proper proposal guaranty.
- 9) If the proposal is prepared with other than ink or typewriter.
- 10) If the certifications contained in the proposal form are not completely executed.

k) Proposal Guaranty

- 1) Each proposal shall be accompanied by either a bid bond on the Department form contained in the proposal, executed by a corporate surety company satisfactory to the Department Council, pursuant to 44 Ill. Adm. Code 675.240, or by a bank cashier's check or a properly certified check for not less than five percent of the amount bid, or for the amount specified in the following schedule:

Amount of Bid		Proposal Guaranty
Up to	5,000	150
\$ 5,000	10,000	300
10,000	50,000	3,000
50,000	100,000	3,000
100,000	150,000	5,000
150,000	250,000	7,500
250,000	500,000	12,500
500,000	1,000,000	25,000
1,000,000	1,500,000	50,000
1,500,000	2,000,000	75,000
2,000,000	3,000,000	100,000
3,000,000	5,000,000	150,000
5,000,000	7,500,000	250,000
7,500,000	10,000,000	400,000
10,000,000	15,000,000	500,000
15,000,000	20,000,000	600,000
20,000,000	25,000,000	700,000
25,000,000	30,000,000	800,000
30,000,000	35,000,000	900,000
OVER	35,000,000	1,000,000

- 2) In the event that one proposal guaranty check is intended to cover two or more proposals, the amount must be equal to the sum of the proposal guaranties which would be required for each individual proposal.
- 3) If a combination bid is submitted, the proposal guaranties which accompany the individual proposals making up the combination will be considered as also covering the combination bid.
- 4) Bank cashier's checks or properly certified checks accompanying proposals shall be made payable to the Treasurer, State of Illinois.
- 1) Delivery of Proposals  
Each proposal should be submitted in a special envelope furnished by

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the Department of Transportation. The blank spaces on the envelope shall be filled in correctly to clearly indicate its contents. When an envelope other than the special one furnished by the Department of Transportation is used, it shall be of the same general size and shape and be similarly marked to clearly indicate its contents. When sent by mail, the sealed proposal shall be addressed to the Department of Transportation at the address and in care of the official in whose office the bids are to be received. All proposals shall be filed prior to the time and at the place specified in the Notice to Bidders. Proposals received after the time for opening of bids will be returned to the bidder unopened.

## m) Withdrawal of Proposals

Permission will be given a bidder to withdraw a proposal if the bidder makes his/her request in writing or by telegram before the time for opening proposals. ~~If a proposal is withdrawn, the bidder will not be permitted to resubmit this proposal at the same letting.~~

## n) Public Opening of Proposals

Proposals will be opened and read publicly at the time and place specified in the Notice to Bidders. Bidders, their authorized agents, and other interested parties are invited to be present.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1150.300 Award and Execution of Contract

## a) Consideration of Proposals

1) After the proposals are opened and read, they will be compared on the basis of the summation of the products of the quantities shown in the bid schedule by the unit bid prices. In the event of a discrepancy between unit bid prices and extensions, the unit bid price shall govern. In awarding contracts, the Department ~~cannot~~ will, in addition to considering the amounts stated in the proposals, take into consideration the responsibility of the various bidders as determined by the Department of Transportation under Section 1150.200(a), and from other investigations which the Department ~~cannot~~ shall make when it has reason to believe that any of the conditions found in Sections 1150.200(a)(4) and (j) exist.

2) The right is reserved to reject any or all proposals, to waive technicalities, or to advertise for new proposals, if, in the judgment of the Department, the best interests of the Department will be served. ~~Council bids received are too high to permit the project to proceed with available funds.~~

## b) Award of Contract

1) The award of contract will be made within 45 calendar days after the opening of proposals to the lowest responsible and qualified bidder whose proposal complies with all the requirements

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prescribed. The successful bidder will be notified by letter of intent that his/her bid has been accepted, and that, subject to the following conditions, the bidder will be the Contractor, and ~~that the bidder has been awarded the contract. No award shall be considered binding upon the Council prior to the Council's execution of the contract.~~

2) An approved contract executed by the Department is required before the State is bound. An award may be cancelled by the Department any time prior to execution in order to protect the public interest and integrity of the bidding process or for any other reason if, in the judgment of the Department, the best interest of the Department will be served.

3) If a contract is not awarded within 45 days after the opening of proposals, a bidder may file a written request with the Department ~~cannot~~ for the withdrawal of his/her bid, and the Council will permit such withdrawal. Provided, however, if the Notice to Bidders specifies a period longer than 45 days after the opening of proposals, to delay the award of contract to coincide with the AML federal grant award, then the time shall be as specified for withdrawal of bids.

## c) Notice of Contract Awarded

Notice of each and every contract that is let or awarded shall be published in the next available Illinois Procurement Bulletin.

## d) Return of Proposal Guaranty

1) The proposal guaranty checks of all except the two lowest bidders will be returned promptly ~~within 30 days~~ after the proposals have been checked, tabulated, and the relation of the proposals will be returned as soon as the contract and contract bond of the successful bidder have been properly executed and approved. Bid bonds will not be returned.

2) After a period of 3 working days after the date of opening proposals has elapsed, the Department ~~if contracts cannot be awarded within 30 days, the Council~~ shall permit the two lowest bidders to substitute for the bank cashier's checks or certified checks submitted with their proposals as proposal guaranties, bid bonds on the Department ~~cannot~~ forms executed by corporate surety companies satisfactory to the Department ~~cannot~~.

## e) Applicant Violator System

1) Under 30 CFR 874.16, every successful bidder for a federally funded AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Bidder eligibility must be confirmed by the federal Office of Surface Mining, Reclamation and Enforcement's automated Applicant/Violator System (AVS) for each contract to be awarded.

2) At the time the successful bidder is notified by letter of intent that his/her bid will be accepted, the Department will provide to



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the bidder an Ownership/Control ("O/C") information package. The bidder shall completely fill out the forms and return the completed forms to the Department. The Department will forward the completed forms to OSM at the Lexington, Kentucky AVS office for data entry and compliance check.

- 3) All subcontractors who will receive 10% or more of the total contract funding will also be required to submit an O/C information package and be subject to the OSM/AVS compliance check, prior to receiving the Department's approval of subcontractor.
- 4) Any contract inspector, selected through a bidding process, regardless of the percentage of contract funding, will also be required to submit an O/C information package and be subject to the OSM/AVS compliance check.
- 5) The Department shall deny a contract and cancel the award upon OSM's recommendation that the successful bidder is not eligible for an AML contract. The Department shall deny approval of subcontractor upon OSM's recommendation that the subcontractor is not eligible for an AML contract. The Department shall deny an inspection contract upon OSM's recommendation that the contract inspector is not eligible for an AML contract.
- 6) Any person denied an AML contract, or participation in an AML funded project, shall appeal the decision and recommendation of OSM directly to OSM. Appeal should be made to establish eligibility for future AML projects. The Department will not delay a project pending appeal. The Department's role in the AVS compliance check process is ministerial and does not involve exercise of independent judgment or review of OSM's decision and recommendation. The Department shall not be responsible for any damages sustained by any person by reason of OSM's determination as to eligibility for AML contracts.
- 7) After a Contractor, subcontractor, or contract inspector has once submitted an O/C information package and has been entered into the AVS in connection with an AML project, the Department may, in connection with subsequent projects, provide dated AVS printouts reflecting the information submitted and the current AVS recommendation, along with an AML Contractor O/C Data Certification form. The Contractor, subcontractor, or contract inspector shall complete and submit the certification in place of the O/C information package, in the same manner as provided above.
- 8) Any potential AML Contractor, subcontractor or contract inspector may submit O/C information directly to OSM at the Lexington AVS Office, to predetermine eligibility for AML contracts.

## f) Requirement of Contract Bond

The Contractor shall furnish the Department a performance and payment bond with good and sufficient sureties in the full amount of the contract as the penal sum. The surety shall be acceptable to the

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Department, shall waive notice of any changes and extensions of time, and shall submit its bond on the form furnished by the Department. The successful bidder, at the time of the execution of the contract, shall deposit with the Council a surety bond for the full amount of the contract. The form of the bond shall be that furnished by the Council and the surety shall be acceptable to the Council, pursuant to 44-111-Adm.-Code-675.240.

## g) Execution of Contract

- 1) The contract shall be executed by the successful bidder and returned, together with the Contract Bond, within 15 days after the contract has been mailed to the bidder.
- 2) If the bidder to whom award is made is a corporation organized under the laws of a State other than Illinois, the bidder shall furnish the Department Council a copy of the corporation's Certificate of Authority to do business in the State of Illinois with the return of the executed contract and bond. Failure to furnish such evidence of a Certificate of Authority within the time required will be considered as just cause for the annulment of the award and the forfeiture of the proposal guaranty to the State, not as a penalty, but in payment of liquidated damages sustained as a result of such failure.

## h) Failure to Execute Contract

- 1) If the contract is not executed by the Department Council within 15 days following receipt from the bidder of the properly executed contracts and bonds, the bidder shall have the right to withdraw his/her bid without penalty.
- 2) Failure of the successful bidder to execute the contract and file acceptable bonds within 15 days after the contract has been mailed to the bidder shall be just cause for the cancellation of the award and the forfeiture of the proposal guaranty which shall become the property of the Department Council, not as a penalty, but in liquidation of damages sustained. Award may then be made to the next lowest responsible bidder, or the work may be readvertised considering the time available for readvertisement, the number of bids received and the variance in the amount of the bids received.

## i) Termination of Contracts

- 1) The Department Council shall, by written order, terminate the contract or any portion thereof after determining that for reasons beyond the control of the parties, the Contractor is prevented from proceeding with or completing the work as originally contracted for, and that termination would, therefore, be in the public interest. Such reasons for termination may include, but need not be necessarily limited to, Executive Orders of the President relating to prosecution of war or national defense, national emergency which creates a serious shortage of materials, orders from duly constituted authorities relating to energy conservation, and restraining orders or injunctions



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obtained by third-party citizen action resulting from national or local environmental protection laws or where the issuance of such order or injunction is primarily caused by acts or omissions of persons or agencies other than the Contractor.

- 2) When contracts, or any portion thereof, are definitely terminated or cancelled, and the Contractor released before all items of work included in his/her contract have been completed, payment will be made for the actual number of units of items of work completed at contract unit prices, or as specified in the contract for partially completed items, and no claims for loss of anticipated profits shall be considered. Reimbursement for organization of the work and moving equipment to and from the job will be made when the volume of the work completed is too small to compensate the Contractor for these expenses under the contract unit prices, the intent being that an equitable settlement will be made with the Contractor.
- 3) Acceptable materials, obtained by the Contractor for the work, that have been inspected, tested and accepted by the Department Executive-Director, and that are not incorporated in the work shall be purchased from the Contractor at actual costs as shown by receipted bills and actual cost records at such points of delivery as may be designated by the Department Executive-Director, when the Department Executive-Director determines that the materials cannot be returned or resold by the Contractor and the Department Executive-Director or other State agency can make use of such material.
- 4) Termination of a contract, as stated above, will not relieve the Contractor or his/her surety of the responsibility of replacing defective work as required by the contract.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 1150.400 Contracts Involving an Expenditure of \$30,000 \$57,000-00 or Less

- a) When the contract for construction of a single reclamation project involves an expenditure of \$30,000 \$57,000-00 or less, the Department Executive-Director shall waive the prequalification and bidding requirements of Section 1150.300, where the imposition of such requirements would involve a disproportionate amount of work, time or cost in relation to the size and simplicity of the project.
- b) When full bidding procedures will not be utilized, the Department Executive-Director shall contact a minimum of three contractors, in the area in which the project is located, to request bids on the proposed work. The three contractors to be contacted shall be selected based upon proximity to the project, past experience, expertise and available equipment and manpower. The contract shall be awarded to the lowest

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responsible bidder considering conformity with specifications, availability for work and suitability of equipment.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART C: EMERGENCY CONSTRUCTION CONTRACTS

### Section 1150.500 Emergency Contracting

- a) Waiver of Bidding Procedures  
When any abandoned mine condition involves a danger to public health and safety and cannot await abatement under normal program procedures, the Department Executive-Director shall waive the prequalification and bidding procedures of Section 1150.300 and 7 the Department Executive-Director shall enter into construction contracts for abatement of the dangerous condition pursuant to the provisions of this Subpart.
- b) Use of Prequalified Prequalification Contractors  
1) The Department Executive-Director shall maintain a current list, revised at least annually, of contractors who are prequalified with the Department of Transportation for the type of construction work encountered in AML Emergency reclamation projects. The list shall also include contractors who have demonstrated responsibility and competence through past performance on AML Emergency reclamation projects. Listed Prequalified contractors shall be used on all projects unless:  
  - A) the particular construction activity involved is not of a type normally performed by the listed contractors for which contractors may be prequalified by the Department of Transportation; or
  - B) listed prequalified contractors cannot be contacted within a reasonable time; or
  - C) listed prequalified contractors are not available to begin work within a reasonable time.
- 2) What constitutes a "reasonable time" shall be determined by the severity of the emergency or dangerous condition, and the cost of temporary protective measures.
- 3) When listed prequalified contractors cannot be used, the Department Executive-Director may use any responsible contractor who appears to be qualified based upon the contractor's reputation, experience, and available equipment.
- c) Obtaining Bids  
  - 1) When the full bidding procedures of Section 1150.300 will not be utilized, the Department Executive-Director or that person's-designee shall attempt to contact at least three available contractors to request proposals. The three contractors to be contacted shall be selected based upon proximity to the project, past experience, expertise and

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- available equipment and manpower.
- 2) When inspection of the site conditions is necessary to understand the detail or complexity of the project, or when requested by a contractor, a pre-bid meeting may be held for interested contractors where the project will be explained and proposal documents distributed. The pre-bid meeting shall be held at the project site whenever possible.
- 3) Interested contractors shall submit their proposals on the provided bid documents.

## d) Contents of Proposal Documents

- 1) When full bidding procedures will not be utilized, the proposal documents will include:
- A) The unsigned agreement, and all attachments thereto, and
- B) Plans, specifications, and any supplemental specifications, and
- C) The itemized bid form to be filled out by the Contractor.
- 2) The itemized bid form shall become the Contractor's proposal upon completion and execution by the Contractor.
- e) Award and Execution of Contract
- The Contractor shall be awarded to the lowest responsible bidder considering conformity with specifications, availability for work and suitability of equipment.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1150.600 Pre-Bidding Emergency Work

## a) Prequalification of Contractors

- 1) When there exists a history of emergency events of a similar nature in a particular area, with a probability of continuing emergency events in that area, the Department Council may elect to pre-bid certain special items of construction and exploratory work, including, but not limited to:

- A) exploratory drilling,  
B) haulage of fill material, and  
C) structural support work.

- 2) Only contractors or consultants who are prequalified with the Department of Transportation for the type of work involved, as set forth in Section 1150.200, or as provided in Section 1150.500(b), will be eligible to pre-bid for emergency work.

## b) Contracts for Pre-Bid Work

- 1) Items of work which are to be pre-bid shall be estimated as to labor, materials, equipment and incidentals required on a typical emergency project, and frequency of projects in a designated geographical area in a given time period.
- 2) Bids shall be an offer to perform the work, according to specifications, for a specific cost per unit of work performed.

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- 3) Contracts for pre-bid work shall be bid, awarded and governed in accordance with the provisions of Subpart B.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART D: PROFESSIONAL SERVICES CONSULTANT-SELECTION-PROCESS

## Section 1150.700 Applicability

This Subpart is applicable to all architectural, engineering, or land surveying professional services provided to the Department pursuant to contract. This Subpart is limited in application to professional services which are covered by the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535]. Related services that may be legally performed by persons not required to be licensed under the Illinois Architecture Practice Act of 1989 [225 ILCS 305], the Professional Engineering Practice Act of 1989 [225 ILCS 325], the Structural Engineering Licensing Act of 1989 [225 ILCS 340], or the Illinois Professional Land Surveyor Act of 1989 [225 ILCS 330] are not covered by this Subpart. This Subpart sets out the procedures and criteria used for the selection of consultants for individual reclamation projects wherein the fees for consultant services will exceed \$57000+00.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1150.800 Prequalification

All architectural, engineering, or land surveying consultants desiring to provide service to the Department in connection with the AML program, whether as Prime Consultants or subconsultants, must be prequalified by the Department of Transportation for the categories of service identified within each project description. To be eligible for a contract award, consultants and their subconsultants must meet the prequalification standards established by the Department of Transportation for the categories listed within each project description. Prequalification is not required for purely mechanical work such as testing or drilling.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1150.900 Subcontracting

- a) Professional Services Consultants may subcontract no more than 50 percent of the project work.
- b) The Professional Services contract shall include the names and addresses of all subconsultants and the anticipated amount of money which they will receive pursuant to the contract [30 ILCS 505/9.04].



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c) If at any time a Professional Services Consultant who had not intended to utilize the service of a subconsultant decides to utilize a subconsultant, the Department and the Consultant shall file an amendment to the original contract with the Comptroller stating the names and addresses of all subconsultants and the anticipated amount of money which they will receive pursuant to the original contract [30 ILCS 505/9.04].  
Consultants are allowed to subcontract for a project but at least 50 percent of the project work must be executed by the prime consultant.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 1150.1000 Requests for Proposals

a) Whenever an AML project requiring architectural, engineering, or land surveying services from outside the Department's professional staff is proposed, the Department shall provide no less than a 14 day advance notice published in the Illinois Procurement Bulletin setting forth the project(s) and services to be procured. The notice shall constitute a Request for Proposals and shall include a description of each project and shall state the time and place for interested Consultants to submit a letter of interest and designated portions of the Consultant's Qualifications Packet.

b) Proposals received after the date and time specified in the Request for Proposals shall be returned unopened.  
Requests for proposals will be mailed to all prequalified consultants as listed by the Department of transportation. Unless otherwise specified in the Request for proposals, proposals for such projects must be returned to the Springfield office of the Council no later than 5:00 p.m. on the 21st calendar day following the date the request for proposal was mailed. If the 21st day is a non-business day, the deadline will be the next following business day. Proposals received after the deadline will be returned unopened.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 1150.1100 Evaluation Procedure Staff Technical Evaluation

a) A selection committee, consisting of the Director of the Office of Mines and Minerals, the Manager of the AML Reclamation Division, and the Supervisor of the Project Management Section, or their designees, shall select firms to provide architectural, engineering, and land surveying services on AML reclamation projects. The Committee shall evaluate the Proposals, taking into consideration the following qualification factors: the Council Staff shall evaluate all proposals using the criteria set forth below. Following this review, the Executive Director of the Council shall present the evaluation of each

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proposal to the Council:  
1) Ability of professional personnel.  
2) Past record and experience on AML projects and projects with similar professional disciplinary requirements.  
3) Performance data on file.  
4) Willingness to meet time requirements.  
5) Location of the Consultant's office in relation to the project site and the Department's AML office that will be managing the project.

6) Workload of the Consultant.  
7) Any other qualifications based factors as the Department may determine in writing are applicable on a project specific basis.

b) The Committee shall assign AML technical staff, having knowledge of the scope of work requirements, to provide preliminary technical review as necessary and appropriate to assure that all project considerations are taken into account. The Council Staff shall use the following criteria in evaluating each proposal:  
1) The consultant's experience with similar or related projects.  
2) The comprehensiveness of the consultant's staffing plan.  
3) Professional and technical background of the consultant and any employees of the consultant.  
4) The performance of consultant with respect to prior contracts with the Council.

c) The Committee shall not seek formal or informal submission of verbal or written estimates of costs or proposals in terms of dollars, hours required, percentage of construction cost, or any other measure of compensation prior to selecting a firm for negotiation.  
d) The Committee may conduct discussions with and require public presentations by Consultants deemed to be the most qualified regarding their qualifications, approach to the project and ability to furnish the required services.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 1150.1200 Selection Procedure Project Selection

a) On the basis of evaluations, discussions and any presentations, the Committee shall select no less than three Consultants that it determines to be qualified to provide services for the project and rank them in order of qualifications to provide those services. The Consultant ranked most preferred shall then be contacted in order to negotiate a contract for a fair and reasonable compensation. The Council shall review the Council Staff evaluation of the prequalified Consultant proposals for feasibility studies and/or plan preparations for individual reclamation projects and designate the preferred proposals in rank order based on the criteria set forth in Section 1150.1300 of this Subpart.



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- b) If fewer than 3 Consultants submit letters of interest and the Committee determines that one or both of those firms are so qualified, the Department may proceed to negotiate a contract as provided in this Part. The Executive Director shall then enter into a contract negotiations with the consultant submitting the number one ranked proposal. If a contract cannot be executed with that consultant, the Executive Director may then enter into negotiations with the next highest ranked consultant.
- c) The decision of the Department shall be final and binding. In making its determination, the Council may choose from any of the proposals submitted for the project. The awarding of a contract shall require an affirmative vote of five members of the Council. A record of each vote and the reasoning for each selection shall be reduced to writing and kept on file in the Council's Springfield office.
- d) Notice of Contract Awarded
- Notice of each and every contract that is awarded shall be published in the next available Illinois Procurement Bulletin.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1150.1300 Contract Negotiations Criteria for Consultant Selection

- a) The Department shall prepare a written description of the scope of the proposed services, entitled "Scope of Work", to be used as a basis for negotiations and shall negotiate a contract with the highest ranked qualified Consultant at a compensation that the Department determines in writing to be fair and reasonable. In making this decision, the Department shall take into account the estimated value, scope, complexity, and professional nature of the services to be rendered. Contracts for feasibility studies and/or plan preparations for individual reclamation projects shall be awarded to the most qualified consultants submitting proposals for such projects.
- b) If the Department is unable to negotiate a satisfactory contract with the Consultant that is most preferred, negotiations with that Consultant will be terminated. The Department shall then begin negotiations with the next ranked Consultant. If the Department is unable to negotiate a satisfactory contract with that Consultant, negotiations with that Consultant shall be terminated. The Department shall then begin negotiations with the next ranked Consultant. In evaluating specific project proposals, the Council shall consider the following criteria and factors in determining the preferred proposals:
- 1) The consultant's experience with similar or related projects;
  - 2) The comprehensiveness of the consultant's staffing plan;
  - 3) Professional and technical background of the consultant and any employees of the consultant;
  - 4) The performance of the consultant with respect to prior contracts with the Council.

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- 5) The location of the consultant's office in relation to the project site and the Council office managing the project.
- 6) The ability of the Consultant to perform the work within the time required.
- 7) The "disadvantaged" or "minority" status of the consultant and/or any affirmative action program of the consultant as further set forth in Section 1150.1500.
- c) If the Department is unable to negotiate a satisfactory contract with any of the selected Consultants, then the Department shall re-evaluate the architectural, engineering, or land surveying services requested, including the estimated value, scope, complexity, and fee requirements. The Department shall then compile a second list of not less than three qualified Consultants and proceed in accordance with the provisions of this Subpart.
- d) A Consultant negotiating a contract with the Department shall negotiate any approved subcontracts for architectural, engineering, and land surveying services at compensation that the Consultant determines in writing to be fair and reasonable based upon a written description of the proposed services of the subconsultant.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1150.1325 Exemptions

- a) Small Contracts
- The provisions of Sections 1150.1000, 1150.1100, and 1150.1200 of this Part do not apply to architectural, engineering, and land surveying contracts of less than \$25,000.
- b) The provisions of Sections 1150.1000, 1150.1100, and 1150.1200 of this Part do not apply to the procurement of architectural, engineering and land surveying services by the Department:
- 1) when the Department determines in writing that it is in the best interests of the State to proceed with the immediate selection of a firm; or
  - 2) in emergencies when immediate services are necessary to protect the public health, safety and general welfare from the adverse effects of mining.

(Source: Added at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1150.1350 Firm Performance Evaluations

The Department shall evaluate the performance of each Consultant upon completion of a contract. That evaluation shall be made available to the Consultant upon request, who may submit a written response, with the evaluation and response retained solely by the State. The evaluation and response shall

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not be made available to any other person or firm and is exempt from disclosure under the Freedom of Information Act [5 ILCS 140].

(Source: Added at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 1150.1400 Complaint Procedure

A complaint regarding any decision rendered by or action taken by the Department Council pursuant to this Part may be filed with the Department Council by submitting a written statement setting forth all the facts and circumstances together with the basis for making such complaint and specifically how such decision or action is alleged to be in contradiction of this Part. Upon receipt of a complaint, the Department Council will determine whether, in the decision or action complained of, the Department Council or Staff has acted in accordance with this Part and advise the person submitting the written statement as to this determination and as to what additional action, if any, the Department Council will take. Provided, however, that any such complaint must be filed within 14 days from the time the person complaining becomes aware of the decision or the action is announced to the public, whichever occurs first.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 1150.1500 Equal Employment Opportunity; Nondiscrimination; Affirmative Action

It is the policy of the Department Council to execute and administer contracts hereunder in accordance with applicable State and Federal laws and regulations regarding nondiscrimination in the hiring of employees or firms, on the basis of race, color, religion, sex or national origin and regarding affirmative action. While every attempt is made to apprise potential consultants of the requirements this policy may impose upon them, the lack of such appraisal will not preclude the Department Council from requiring compliance with such applicable laws and regulations as a condition to continued payment for work completed under a contract with the Department Council; nor will the lack of such appraisal preclude the Department Council from requiring the return of such payments which would not have been made if, at the time of payment, the Department Council had been aware of any non-compliance. Applicable State and Federal laws and regulations are the Equal Employment Opportunity Clause contained in Section 202 of Executive Order 11246, as implemented by 41 CFR 60-1 (1985) and 43 CFR 17(1985); and the Illinois Department of Human Rights' "Procedures Applicable to All Agencies" (44 Ill. Adm. Code 750).

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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1) Heading of the Part: Nonmethane Organic Compounds

2) Code Citation: 35 Ill. Adm. Code 220

3) Section Numbers: Proposed Action:

220.100	New
220.110	New
220.120	New
220.130	New
220.200	New
220.210	New
220.220	New
220.230	New
220.240	New
220.250	New
220.260	New
220.270	New
220.280	New
220.290	New

4) Statutory Authority: 415 ILCS 5/4, 9.1, 27 and 28.5

5) A Complete Description of the Subjects and Issues Involved: This proposed Docket 98-28 was filed by the Illinois EPA with the Board on March 13, 1998. As explained in more detail in the Board's opinion of March 19, 1998, available at the Clerk's office at the address noted below at #11, the proposed new Part adds requirements for the control of nonmethane organic compounds (NMOG) from municipal solid waste (MSW) landfills where construction, reconstruction, or modification began before May 30, 1991, and that have either accepted waste after November 8, 1987, or have additional unused capacity. Pursuant to Section 111(d) of the Clean Air Act, the Illinois EPA is required to develop a plan implementing emissions guidelines in the State of Illinois after the United States Environmental Protection Agency (USEPA) designates a new category of sources warranting control of pollutants (see 42 U.S.C. 7411(d)). On March 12, 1996, the USEPA designated MSW landfills as a source category and designated landfill gas, with NMOG as a surrogate, as a pollutant. Landfill emissions are of concern because they contain volatile organic material (a contributor to ozone formation), toxic air pollutants (carcinogens), and methane (a contributor to global warming). MSW landfills are defined as landfills that accept household waste, but they may also accept other types of waste. The Illinois EPA is proposing a new Part that will contain requirements for owners or operators of MSW landfills of a certain size to install and operate a gas collection and control system, demonstrate compliance, monitor emissions, file reports, and keep records.

In summary, all owners or operators of MSW landfills will be required to file a design capacity report within 90 days after the effective date of

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the rules that determines whether they meet the threshold for filing an NMOC emission rate report. MSW landfill owners or operators with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must also file an NMOC emission rate report to determine whether they are required to install a gas collection control system. Owners or operators of MSW landfills that have NMOC emissions equal to or greater than 50 megagrams per year must install a gas collection and control system within 30 months after the effective date of this rule. MSW landfill owners or operators with emissions less than 50 megagrams per year must file periodic NMOC emission rate reports to demonstrate that emissions from their landfill remain below the threshold.

- 6) Will this proposed rule replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed rule contain incorporations by reference? Yes
- 9) Are there any proposed amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate.

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking? Send written comments concerning this rulemaking within 45 days after this publication in the *Illinois Register* to:

Dorothy Gunn  
Clerk of the Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

and

Rachel L. Doctors  
Assistant Counsel  
Illinois Environmental Protection Agency  
1021 N. Grand Avenue East  
Springfield, IL 62702

Questions concerning this rule should be directed toward Catherine Glenn at (312) 814-6923 or (815) 753-0947.

- 12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Owners and operators of municipal solid waste

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landfills

- B) Reporting, bookkeeping or other procedures required for compliance:  
No additional requirements
- C) Types of professional skills necessary for compliance: None
- 13) Regulatory Agenda on which this rulemaking was summarized: January 1998
- The full text of the Proposed Rules begins on the next page:



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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE B: AIR POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD  
SUBCHAPTER C: EMISSION STANDARDS AND LIMITATIONS FOR STATIONARY SOURCES

PART 220  
NONMETHANE ORGANIC COMPOUNDS  
SUBPART A: GENERAL PROVISIONS

Section	Purpose
220.100	Definitions
220.110	Abbreviations
220.120	Incorporations by Reference

SUBPART B: MSW LANDFILLS

Section	Purpose
220.200	Applicability
220.210	Compliance Requirements and Schedule
220.220	Gas Collection System Requirements
220.230	Gas Control System Requirements
220.240	Compliance Procedures for Gas Collection Systems
220.250	Operational Standards for Collection and Control Systems
220.260	Test Methods and Procedures
220.270	Monitoring of Operations
220.280	Reporting Requirements
220.290	Recordkeeping Requirements

AUTHORITY: Implementing and authorized by Sections 4, 9.1, 27, and 28.5 of the Illinois Environmental Protection Act [415 ILCS 5/4, 9.1, 27, and 28.5].

SOURCE: Adopted at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

NOTE: In this Part, unless the context clearly indicates otherwise, superscript numbers or letters are denoted by parentheses and subscript are denoted by brackets

SUBPART A: GENERAL PROVISIONS

Section 220.100 Purpose

This Part contains emission control requirements for municipal solid waste (MSW) landfills in accordance with section 111(d) and subpart B of the Clean Air Act.

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Section 220.110 Definitions

The definitions in this Section apply only to the provisions of this Part. Unless otherwise defined herein and unless a different meaning of a term is clear from its context, the definitions of terms used in this Part shall have the meanings specified by 35 Ill. Adm. Code 201.102, 211, and 810.103.

"Active collection system" means a gas collection system that uses gas mover equipment.

"Active landfill" means a landfill in which solid waste is being placed or a landfill that is planning to accept waste in the future.

"Closed landfill" means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as described under 35 Ill. Adm. Code 811.110 and obtaining a developmental permit pursuant to Section 21 of the Illinois Environmental Protection Act (the Act). Once a permit has been received and additional solid waste is placed in the landfill, the landfill is no longer closed.

"Commercial waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household and industrial wastes.

"Controlled landfill" means any landfill at which collection and control systems are required under this Part as a result of the NMOC emission rate. The landfill is considered controlled at the time an application for a construction permit for a collection and control system is submitted to the Agency in compliance with Sections 220.220 and 220.230 of this Part.

"Design capacity" means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass, as specified in the permit(s) issued pursuant to Section 21(d) of the Act for the source plus any in-place waste not accounted for in the permit(s); if no design capacity is specified in a permit, then the design capacity shall be calculated using good engineering practices; or if the landfill is closed pursuant to the applicable regulations in 35 Ill. Adm. Code 800 through 849, the actual capacity specified in the closure plan. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million Mg or 2.5 million m(3), the calculation must include a site-specific density, which must be recalculated annually.

"Disposal facility" means all contiguous land and structures, and improvements on the land used for the disposal of solid waste.

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Portions of the disposal facility may be separated by access roads.

"Emission rate cutoff" means the threshold annual emission rate to which a landfill compares its estimated emission rate to determine if control under this Part is required.

"Enclosed combustor" means an enclosed firebox. Examples include, but are not limited to, an enclosed flare, a boiler, and an internal combustion engine.

"Flare" means an open combustor without enclosure or shroud.

"Gas mover equipment" means the equipment (i.e., fan, blower, compressor) used to transport landfill gas through the header system.

"Household waste" means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). (Section 3.89 of the Act)

"Industrial waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of RCRA, 40 CFR 264 and 265. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Interior well" means any well or similar collection component located inside the perimeter of the landfill. A perimeter well located outside the landfilled waste is not an interior well.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, or an underground injection well. For the purposes of this Part, landfills include waste piles.

"Lateral expansion" means a horizontal expansion of the waste boundaries of an existing MSW landfill. A lateral expansion is not a modification for the purposes of filing an amended design capacity report pursuant to Section 220.210(a) of this Part, unless it results in an increase in the design capacity of the landfill.

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"Modification" means an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion.

"Municipal solid waste (MSW)" means household waste.

"Municipal solid waste (MSW) landfill" means an entire disposal facility or landfill in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned or operated.

"Municipal solid waste (MSW) landfill emissions" means gas generated by decomposition of organic waste deposited in an MSW landfill or derived from the evolution of organic compounds in the waste.

"Nondegradable waste" means any waste that does not decompose through chemical breakdown or microbiological activity. Examples include, but are not limited to, concrete, municipal waste combustor ash, and metals.

"Nonmethane organic compounds (NMOC)" means nonmethane organic compounds, as measured according to the provisions of Section 220.260 of this Part.

"Passive collection system" means a gas collection system that uses solely positive pressure within the landfill to move the gas rather than using gas mover equipment.

"Putrescible waste" means a solid waste that contains organic matter capable of being decomposed by microorganisms so as to cause a malodor, gases, or other offensive conditions, or which is capable of providing food for birds and vectors. Putrescible wastes may form a contaminated leachate from microbiological degradation, chemical processes, and physical processes. Putrescible waste includes, but is not limited to, garbage, offal, dead animals, general household waste, and commercial waste. All solid wastes that do not meet the definitions of inert or chemical wastes shall be considered putrescible wastes.

"Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

"Solid waste" means a waste that is defined as an inert waste, as a

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putrescible waste, as a chemical waste or as a special waste, and which is also not defined as a hazardous waste pursuant to 35 Ill. Adm. Code 721.

"Sufficient density" means any number, spacing, and combination of collection system components, including vertical wells, horizontal collectors, and surface collectors, necessary to maintain emission and migration control as determined by measures of performance set forth in this Part.

"Sufficient extraction rate" means a rate sufficient to maintain a negative pressure at all wellheads in the collection system without causing air infiltration, including any wellheads connected to the system as a result of expansion or excess surface emissions, for the life of the blower.

## Section 220.120 Abbreviations

Act	Illinois Environmental Protection Act
Agency	Illinois Environmental Protection Agency
Board	Illinois Pollution Control Board
°C	degrees Celsius or centigrade
cm	centimeters
CAAPP	Clean Air Act Permit Program
°F	degrees Fahrenheit
hr	hours
m	meters
m(3)	cubic meters
Mg	megagrams
mmbtu	million British thermal units
MSW	municipal solid waste
MW	megawatt; 1 million watts
NMOC	nonmethane organic compounds
NOx	nitrogen oxides
ppm	parts per million
ppmv	parts per million by volume
RCRA	Resource Conservation and Recovery Act
SIP	State Implementation Plan
USEPA	United States Environmental Protection Agency
VOC	volatile organic compounds
VOM	volatile organic material
yr	years

## Section 220.130 Incorporations by Reference

The following materials are incorporated by reference. These incorporations by reference do not include any later amendments or editions.

- a) Section 4 of Method 2E: Determination of Landfill Gas: Gas Production

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- b) Flow Rate, 40 CFR 60, Appendix A (61 Fed. Reg. 9929 (March 12, 1996)).
- c) Method 25C: Determination of Nonmethane Organic Compounds (NMOC) in MSW Landfill Gases, 40 CFR 60, Appendix A (61 Fed. Reg. 9929 (March 12, 1996)).
- d) Compilation of Air Pollutant Emission Factors (AP-42) the Technical Support Division of OAQPS, EPA, MD-14, Research Triangle Park, NC 27711.
- e) Sections 3, 3.1.3, 4.2, 4.3.1, and 4.4 of Method 21 of Appendix A, 40 CFR 60.
- f) Method 3C, Appendix A, 40 CFR 60.
- g) Method 3A, Appendix A, 40 CFR 60.
- h) Method 18, Appendix A, 40 CFR 60.
- i) General Control Device Requirements, 40 CFR 60.18.

## SUBPART B: MSW LANDFILLS

## Section 220.200 Applicability

- a) Except as provided in subsection (b) of this Section, an owner or operator of an MSW landfill for which construction, reconstruction, or modification commenced before May 30, 1991, is subject to the requirements of this Subpart if the landfill has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition.
- b) Any MSW landfill that commenced construction, reconstruction, or modification on or after May 30, 1991, is subject to the requirements of 40 CFR 60, Subpart WWW, in lieu of the requirements of this Part.

## Section 220.210 Compliance Requirements and Schedule

- a) Each owner or operator of an MSW landfill having a design capacity less than 2.5 million Mg by mass or 2.5 million m(3) by volume shall submit an initial design capacity report to the Agency as provided in Section 220.280(a) of this Subpart. The owner or operator may calculate design capacity in either Mg or m(3) for comparison with the exemption values. Any density conversions shall be documented and submitted with the report. If the landfill is subsequently modified, then the owner or operator shall submit to the Agency an amended design capacity report as provided for in Section 220.280(a)(3) of this Subpart. Submittal of an initial design capacity report and, if applicable, an amended design capacity report shall fulfill the requirements of this Subpart. Pursuant to Section 220.200(b) of this Subpart, modification of an MSW landfill will subject it to the requirements of 40 CFR 60, Subpart WWW.
- b) An owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million Mg and 2.5 million m(3) shall submit an initial design capacity report and initial emissions rate report to the Agency, as provided in Section 220.280(a) and (b) of this Subpart,



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and comply with either subsection (c) or (d) of this Section.

- c) For MSW landfills with an NMOC emissions rate less than 50 Mg/yr, the owner or operator shall:

- 1) Submit an emission rate report, as provided by Section 220.280(b) of this Subpart, to the Agency; and
- 2) Recalculate the NMOC emission rate using the procedures specified in Section 220.260(a) of this Subpart until such time as the calculated NMOC emission rate is equal to or greater than 50 Mg/yr, at which time the provisions of subsection (d) of this Section shall apply, or the landfill is closed.

- d) For MSW landfills with emissions equal to or greater than 50 Mg/yr, calculated pursuant to Section 220.260(a) of this Subpart, within 30 months after the date when the first annual NMOC emission rate report equals or exceeds 50 Mg/yr, an owner or operator shall:

- 1) Install and operate:

A) A gas collection and control system meeting the gas collection system and control requirements of Sections 220.220 and 220.230 of this Subpart; or

B) An alternate gas collection and control system using alternate procedures for gas collection and control, determining compliance, monitoring, operation, testing, recordkeeping, or reporting instead of those provided for in this Subpart, as approved by the Agency or Board, as meeting the requirements in Section 220.220(d) or (e), or Section 220.230(d) or (e) of this Subpart. Such alternate system shall be effective only when included in a federally enforceable permit or approved as a SIP revision.

- 2) Certify compliance: Within 6 months of initial startup or upon change in method of compliance, or within 39 months of the effective date of this Part, whichever is later, the owner or operator of an MSW landfill subject to the control requirements of this Subpart must certify compliance with the requirements of this Subpart by submitting to the Agency the following:

A) A description of the gas collection and control system used;

B) The date the system was installed;

C) A demonstration that the control system meets the requirements of Section 220.230 of this Subpart:

- i) For active collection systems: the reduction efficiency or ppmv must be established by a performance test using the test methods required pursuant to Section 220.260(d) of this Subpart;
- ii) For open flares: compliance with the requirements of 40 CFR 60.18, incorporated by reference in Section 220.130 of this Part, must be established.

## Section 220.220 Gas Collection System Requirements

- a) Each owner or operator of an MSW landfill having a design capacity

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equal to or greater than 2.5 million Mg and 2.5 million m(3), and a calculated NMOC emission rate equal to or greater than 50 Mg/yr, must install and operate a gas collection system that meets the requirements of either subsection (b), (c), (d), or (e) of this Section and:

- 1) Handles maximum expected gas flow rate from the entire area of the MSW landfill that warrants control pursuant to subsection (b)(1)(D) of this Section for the period required in Section 220.250(h) of this Subpart, as calculated pursuant to Section 220.240(a) of this Subpart;
- 2) Collects gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for a period of:

A) 5 years or more, if active; or

B) 2 years or more if closed or at final grade;

- 3) Is designed to minimize off-site migration of subsurface gas;
- 4) Routes all the collected gas to a control system that complies with the requirements in Section 220.230 of this Subpart; and

- 5) Collects and treats gas in accordance with the applicable requirements of 35 Ill. Adm. Code 800 through 849.

## b) Active Collection Systems:

1) Active collection wells, horizontal collectors, surface collectors, or other extraction devices shall be sited at a sufficient density throughout all gas producing areas using the following procedures:

A) The collection devices within the interior and along the perimeter areas shall be designed to achieve comprehensive control of surface gas emissions.

B) The sites for gas collection devices, as determined in subsection (b)(1)(A) of this Section, shall address landfill gas migration issues and augmentation of the collection system through the use of active or passive systems at the landfill perimeter or exterior.

C) Collect gas at a sufficient extraction rate, as defined at Section 220.110 of this Part.

D) The placement of gas collection devices determined in subsection (b)(1)(A) of this Section shall control all gas producing areas, except as provided by this subsection (b)(1)(D).

- i) Any segregated area of asbestos or nondegradable material may be excluded from collection, if documented as provided under Section 220.280(f)(3) of this Subpart. The documentation shall provide the nature, date of deposition, location and amount of asbestos or nondegradable material deposited in the area, and shall be provided to the Agency upon request.
- ii) Any nonproductive area of the landfill may be excluded

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from control provided that the total of all excluded areas can be shown to contribute less than 1 percent of the total amount of NMOC emissions from the landfill. The amount, location, and age of the material shall be documented and provided to the Agency upon request. A separate NMOC emissions estimate shall be made for each section proposed for exclusion, and the sum of all such sections shall be compared to the NMOC emissions estimate for the entire landfill, as calculated pursuant to Section 220.260 of this Subpart. Emissions from each section shall be computed using the following equation:

$$Q[i] = 2kL[o]M[i](e^{-kt[i]})(C[NMOC])(3.6 \times 10^{-9})$$

where:

$Q[i]$	=	NMOC emission rate from the i(th) section, Mg/yr
$k$	=	methane generation rate constant, yr(-1)
$L[o]$	=	methane generation potential, m(3) per Mg solid waste
$M[i]$	=	mass of degradable solid waste in i(th) section, Mg
$t[i]$	=	age of the solid waste in the i(th) section, years
$C[NMOC]$	=	concentration of NMOC, ppmv
$3.6 \times 10^{-9}$	=	conversion factor

The values for  $k$  and  $C[NMOC]$  determined in field testing shall be used, if field testing has been performed in determining the NMOC emission rate or the radii of influence (the distance from the well center to a point in the landfill where the pressure gradient applied by the blower or compressor approaches zero). If field testing has not been performed, the default values for  $k$ ,  $L[o]$ , and  $C[NMOC]$  provided in Section 220.260(a)(1) of this Subpart shall be used. The mass of nondegradable solid waste contained within the given section may be subtracted from the total mass of the section when estimating emissions, provided the nature, location, age and amount of the nondegradable material is documented.

- 2) The gas collection devices shall be constructed using the following equipment or procedures:

A) The landfill gas extraction components shall be constructed of polyvinyl chloride (PVC), high density polyethylene

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(HDPE) pipe, fiberglass, stainless steel, or other nonporous corrosion resistant material of suitable dimensions to convey projected amounts of gases; withstand installation, static, and settlement forces; and withstand planned overburden or traffic loads. The collection system shall extend as necessary to comply with emission and migration standards. Collection devices, such as wells and horizontal collectors, shall be perforated to allow gas entry without head loss sufficient to impair performance across the intended extent of control. Perforations shall be situated with regard to the need to prevent excessive air infiltration.

B) Vertical wells shall be placed so as not to endanger underlying liners and shall address the occurrence of water within the landfill. Holes and trenches constructed for piped wells and horizontal collectors shall be of sufficient cross-section so as to allow for their proper construction and completion including, for example, centering of pipes and placement of gravel backfill. Collection devices shall be designed so as not to allow indirect short circuiting of air into the cover, refuse into the collection system or gas into the air. Any gravel used around pipe perforations should be of a dimension so as not to penetrate or block perforations.

C) Collection devices may be connected to the collection header pipes below or above the landfill surface. The connector assembly shall include a positive closing throttle valve, any necessary seals and couplings, access couplings and at least one sampling port. The collection devices shall be constructed of PVC, HDPE, fiberglass, stainless steel, or other nonporous material of suitable thickness.

3) The landfill gas shall be conveyed to a gas control system through the collection header pipe(s). The gas mover equipment shall be sized to handle the maximum gas generation flow rate expected for the period of intended use pursuant to Section 220.250(h) of this Subpart using the following procedures:

A) For existing gas collection systems, the flow data shall be used to project the maximum flow rate. If no flow data exists, the procedures in subsection (b)(3)(B) of this Section shall be used.

B) For new gas collection systems, the maximum flow rate shall be in accordance with Section 220.240(a) of this Subpart.

c) Passive Collection Systems:

1) A passive collection system shall be installed with liners on the bottom and all sides in all areas in which gas is to be collected. The liners shall meet all requirements specified in 35 Ill. Adm. Code 811.306.

2) The collection and control system shall either conform with the



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specifications for active collection systems in subsection (a) of this Section or the owner or operator must obtain the Agency's approval for alternate provisions as provided for in subsection (d) of this Section.

d) Alternate Collection Systems:

An owner or operator seeking to install an alternate gas collection system shall demonstrate to the Agency that such collection system is capable of capturing the maximum expected gas flow rate from the entire area of the MSW landfill, for the period required in Section 220.250(h) of this Subpart, as calculated pursuant to Section 220.240(a) of this Subpart, and in an equivalent manner to that required by this Section. Any alternate gas collection system must be approved by the Agency. Such alternate shall be effective only when included in a federally enforceable permit or approved as a SIP revision. The alternate shall include any alternate procedures for collection, control, compliance, monitoring, operation, testing, reporting, and recordkeeping that are appropriate.

e) Alternate Emissions Standard:

Pursuant to Section 28.1 of the Act [415 ILCS 5/28.1], and in accordance with 35 Ill. Adm. Code 106, Subpart G, provisions for adjusted standards, adjusted standards for alternate emissions standards or alternate emissions standards with an alternate compliance schedule shall be granted by the Board, to the extent consistent with federal law. An owner or operator seeking an alternate emissions standard or an alternate emissions standard with an alternate compliance schedule must demonstrate to the Board that, with respect to the MSW landfill, the control requirements meet one or more of the criteria listed in this subsection (e) pursuant to 40 CFR 60.24(f). Any such request must be approved by the Board. Such alternate shall be effective only when included in a federally enforceable permit or approved as a SIP revision. Any alternate shall include any procedures for collection, control, compliance, monitoring, operation, testing, reporting and recordkeeping that are appropriate and a demonstration that the control requirements, as contained in this Subpart, as they apply to the MSW landfill, meet one or more of the following criteria:

- 1) Unreasonable cost of control resulting from plant age, location, or basic process design;
- 2) Physical impossibility of installing necessary control equipment; or
- 3) Other factors specific to the MSW landfill that support an alternate emissions standard or alternate emissions standard with final compliance date.

### Section 220.230 Gas Control System Requirements

Each owner and operator of an MSW landfill subject to the control requirements of this Subpart must install and operate a gas collection system that routes

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all the collected gas to a gas control system that complies with the requirements in subsection (f) and either install a gas control system, as described in either subsection (a), (b), or (c) of this Section, or obtain approval of and install an alternate gas control system pursuant to subsection (d) or (e) of this Section.

- a) An open flare designed and operated in accordance with 40 CFR 60.18, incorporated by reference in Section 220.130 of this Part.
- b) A control system designed and operated to reduce NMOC by 98 weight-percent, or, when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight-percent or reduce the outlet NMOC concentration to less than 20 ppmv, dry basis as hexane at 3 percent oxygen. The reduction efficiency or ppmv must be established by an initial performance test required pursuant to Section 220.210(d)(2), using the test methods required under Section 220.260(d) of this Subpart:

- 1) If a boiler or process heater is used as the control device, the landfill gas stream shall be introduced into the flame zone.
- 2) The control device shall be operated within the parameter ranges established during the initial or most recent performance test. The operating parameters to be monitored are specified in Section 220.270 of this Subpart. The initial performance test must be performed within 6 months after startup or within 39 months after the effective date of this Part, whichever is later.
- c) A treatment system that processes the collected gas for subsequent sale or use. All emissions from any atmospheric vent from the gas treatment system shall be subject to the requirements of subsection (b) of this Section.
- d) An alternate gas control system approved by the Agency. An owner or operator seeking to install an alternate gas control system shall demonstrate to the Agency that such collection system is capable of control equivalent to subsection (b) of this Section. Such alternate shall be effective only when included in a federally enforceable permit or approved as a SIP revision. The alternate shall include any alternate procedures for collection, control, compliance, monitoring, operation, testing, reporting, and recordkeeping that are appropriate. Pursuant to Section 28.1 of the Act [415 ILCS 5/28.1], and in accordance with 35 Ill. Adm. Code 106, Subpart G, provisions for adjusted standards, adjusted standards for alternate emissions standards or alternate emissions standards with an alternate compliance schedule shall be granted by the Board, to the extent consistent with federal law. An owner or operator seeking an alternate emissions standard or an alternate emissions standard with an alternate compliance schedule must demonstrate to the Board that, with respect to the MSW landfill, the control requirements meet one or more of the criteria listed in this subsection (e), pursuant to 40 CFR 60.24(f). Any such request must be approved by the Board. Such alternate shall be effective only when included in a federally enforceable permit or approved as a SIP revision. Any alternate shall



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include any procedures for collection, control, compliance, monitoring, operation, testing, reporting, and recordkeeping that are appropriate and a demonstration that the control requirements as contained in this Subpart, as they apply to the MSW landfill, meet one or more of the following criteria:

- 1) Unreasonable cost of control resulting from plant age, location, or basic process design;
  - 2) Physical impossibility of installing necessary control equipment; or
  - 3) Other factors specific to the MSW landfill that support an alternate emissions standard or alternate emissions standard with final compliance date.
- f) Gas control systems must be operated in accordance with a permit issued pursuant to the applicable requirements of 35 Ill. Adm. Code 800 through 849.

## Section 220.240 Compliance Procedures for Gas Collection Systems

- a) The methods specified in subsections (a)(1) through (a)(6) of this Section shall be used to determine whether the gas collection system is in compliance with Section 220.220 of this Subpart.

1) To calculate the maximum expected gas generation flow rate from the MSW landfill, one of the following equations shall be used. The  $k$  and  $L[0]$  kinetic factors shall be those published in the Compilation of Air Pollutant Emission Factors (AP-42) incorporated by reference in Section 220.130 of this Part, or other site-specific emission factors approved by the Agency. If  $k$  has been determined as specified in Section 220.260(a)(4) of this Subpart, the value of  $k$  determined from the test shall be used. A value of no more than 15 years shall be used for the intended use period of the gas mover equipment, the variable  $t$ . The active life of the landfill is the age of the landfill plus the estimated number of years until closure.

- A) For sites with unknown year-to-year solid waste acceptance rate:

$$Q[m] = 2L[0]R(e^{-kc}) - e(-kt))$$

where:

$Q[m]$  = maximum expected gas generation flow rate,  $m(3)/yr$   
 $L[0]$  = methane generation potential,  $m(3)$  per Mg solid waste  
 $R$  = average annual acceptance rate,  $Mg/yr$   
 $k$  = methane generation rate constant,  $yr^{-1}$   
 $t$  = age in years of the landfill at

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equipment installation plus time the owner or operator intends to use the gas mover equipment or active life of the landfill, whichever is less. If the equipment is installed after closure,  $t$  in years is the age of the landfill at installation  
 $c$  = time since closure, years (for an active landfill  $c = 0$  and  $e(-kc)=1$ )

- B) For sites with known year-to-year solid waste acceptance rates:

$$Q[m] = \sum_{i=1}^n 2kL[0]M[i](e^{-kt[i]})$$

where:

$Q[m]$  = maximum expected gas generation flow rate,  $m(3)/yr$   
 $k$  = methane generation rate constant,  $yr^{-1}$   
 $L[0]$  = methane generation potential,  $m(3)$  per Mg solid waste  
 $M[i]$  = mass of solid waste in the  $i$ (th) section, Mg  
 $t[i]$  = age of the  $i$ (th) section, yr

- C) If a collection and control system has been installed, actual flow data may be used to project the maximum expected gas generation flow rate instead of, or in conjunction with, the equations in subsections (a)(1)(A) and (a)(1)(B) of this Section. If the landfill is still accepting waste, the actual measured flow data will not equal the maximum expected gas generation rate, so calculations made using the equations in subsection (a)(1)(A) or (a)(1)(B) of this Section or other methods shall be used to predict the maximum gas generation rate over the intended period of use of the gas control system equipment.

- 2) For the purpose of determining the sufficient number of gas collectors, the owner or operator shall design a system of vertical wells, horizontal collectors, or other type of collection device, capable of controlling and extracting gas from all portions of the landfill sufficient to meet the operational and performance standards of Sections 220.220 through 220.250. Such design must be approved by the Agency as part of an air construction permit or a CAAPP permit, if the gas collection

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- system was installed prior to the effective date of this Part.
- 3) For the purpose of demonstrating whether the gas collection system flow rate of an active collection system is sufficient, the owner or operator shall measure gauge pressure in the gas collection header at each individual well monthly. If positive pressure exists, action shall be initiated to correct the exceedance within 5 calendar days, except for the three conditions allowed under Section 220.250(b) of this Subpart. If negative pressure cannot be achieved without excess air infiltration within 15 calendar days after the first measurement, the gas collection system shall be expanded to correct the exceedance within 120 days after the initial measurement of positive pressure. Any attempted corrective measure must not cause exceedances of other operational or performance standards. An alternate timeline for correcting the exceedance may be submitted to the Agency for approval.
- 4) Owners or operators are not required to expand the system, as required in subsection (a)(3) of this Section, during the first 180 days after gas collection system startup.
- 5) For purposes of identifying whether excess air infiltration into the landfill is occurring, the owner or operator shall monitor each well on a monthly basis for temperature and nitrogen or oxygen, as provided in Section 220.250(c) of this Subpart. If a well exceeds one of these operating parameters, action shall be initiated to correct the exceedance within 5 calendar days. If correction of the exceedance cannot be achieved within 15 calendar days after the first measurement, the gas collection system shall be expanded to correct the exceedance within 120 days after the initial exceedance. An alternate timeline for correcting the exceedance may be submitted to the Agency for approval.
- 6) An owner or operator using a collection system that does not conform to the specifications provided in Section 220.220(b) or (c) of this Subpart shall provide information satisfactory to the Agency, as specified in Section 220.220(d) of this Subpart, demonstrating that off-site migration is being controlled.
- b) To comply with the operational standards in Section 220.250(a) of this Subpart, each owner or operator of a controlled landfill shall install each well or design component as specified in a construction permit issued by the Agency. Each well shall be installed no later than 60 days after the date on which the initial solid waste has been in place for a period of:
- 1) 5 years or more if active; or
  - 2) 2 years or more if closed or at final grade.
- c) The following procedures shall be used for compliance with the surface methane operational standard as provided in Section 220.250(d) of this Subpart.
- 1) After installation of the collection system, the owner or

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- operator shall monitor surface concentrations of methane along the entire perimeter of the collection area and along a pattern that traverses the landfill at 30-meter intervals (or site-specific established spacing) for each collection area on a quarterly basis using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in subsection (d) of this Section.
- 2) The background concentration shall be determined by moving the probe inlet upwind and downwind outside the boundary of the landfill at a distance of at least 30 meters from the perimeter wells.
- 3) Surface emission monitoring shall be performed in accordance with Section 4.3.1 of Method 21 of Appendix A, 40 CFR 60, incorporated by reference in Section 220.130 of this Part, except that the probe inlet shall be placed within 5 to 10 cm of the ground. Monitoring shall be performed during typical meteorological conditions.
- 4) Any reading of 500 ppm or more above background at any location shall be recorded as a monitored exceedance and the actions specified in subsections (c)(4)(A) through (c)(4)(E) of this Section shall be taken. As long as the actions specified below are taken, the exceedance is not a violation of the operational requirements of Section 220.250(d) of this Subpart.
- A) The location of each monitored exceedance shall be marked and the location recorded.
  - B) Cover maintenance or adjustments to the vacuum of the adjacent wells to increase the gas collection in the vicinity of each exceedance shall be made and the location shall be remonitored within 10 calendar days after detecting the exceedance.
  - C) If the remonitoring of the location shows a second exceedance, additional corrective action shall be taken and the location shall be monitored again within 10 days after the second exceedance. If the remonitoring shows a third exceedance for the same location, the action specified in subsection (c)(4)(E) of this Section shall be taken. No further monitoring of that location is required until the action specified in subsection (c)(4)(E) of this Section has been taken.
  - D) If the remonitoring of the location does not show an exceedance, as specified by subsection (c)(4)(B) or (c)(4)(C), the location shall be remonitored 1 month from the initial exceedance. If the 1 month remonitoring shows a concentration less than 500 ppm above background, no further monitoring of that location is required until the next quarterly monitoring period. If the 1 month remonitoring shows an exceedance, the actions specified in subsection (c)(4)(C) or (c)(4)(E) of this Section, as appropriate,

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shall be taken.

E) For any location where there are three monitored exceedances within a quarterly period, a new well or other collection device shall be installed within 120 calendar days after the initial exceedance. An alternate remedy to the exceedance, such as upgrading the blower, header pipes, or control device, and a corresponding timeline for installation may be submitted to the Agency for approval.

5) The owner or operator shall implement a program to monitor for cover integrity and implement cover repairs as necessary on a monthly basis.

d) The following instrumentation specifications and procedures for surface emission monitoring devices apply to the monitoring required by subsection (c) of this Section:

- 1) The portable analyzer shall meet the instrument specifications provided in Section 3, Method 21, Appendix A, 40 CFR 60, incorporated by reference in Section 220.130 of this Part, except that methane shall replace all references to VOC.
- 2) The calibration gas shall be methane, diluted to a nominal concentration of 500 ppm in air.
- 3) To meet the performance evaluation requirements in Section 3.1.3, Method 21, Appendix A, 40 CFR 60, incorporated by reference in Section 220.130 of this Part, the instrument evaluation procedures of Section 4.4 of Method 21, Appendix A, 40 CFR 60, incorporated by reference in Section 220.130 of this Part, shall be used.
- 4) The calibration procedures provided in Section 4.2, Method 21, Appendix A, 40 CFR 60, incorporated by reference in Section 220.130 of this Part, shall be followed immediately before commencing a surface monitoring survey.

e) The MSW landfill owners or operators are required to comply with the provisions of this Subpart at all times, except during periods of start-up, shutdown, or malfunction, provided that the duration of start-up, shutdown, or malfunction must not exceed 5 days for collection systems and must not exceed 1 hour for treatment or control devices.

#### Section 220.250 Operational Standards for Collection and Control Systems

Each owner or operator of an MSW landfill with a gas collection and control system shall:

- a) Operate the collection system such that gas is collected from each area, cell, or group of cells in the MSW landfill in which the initial solid waste has been in place for:
  - 1) 5 years or more if active; or
  - 2) 2 years or more if closed or at final grade.
- b) Operate the collection system with negative pressure at each wellhead except under the following conditions:

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1) A fire or increased well temperature. The owner or operator shall record instances when positive pressure occurs in efforts to avoid a fire. These records shall be submitted with the annual reports as provided in Section 220.280(e)(1) of this Subpart.

2) Use of a geomembrane or synthetic cover. The owner or operator shall develop pressure limits associated with such a cover that must be approved by the Agency.

3) A decommissioned well. A well may experience a static positive pressure after shut down to accommodate for declining flows. All design changes shall be approved by the Agency.

c) Operate each interior wellhead in the collection system with a landfill gas temperature less than 55°C (131°F) and with either a nitrogen level less than 20 percent or an oxygen level less than 5 percent. The owner or operator may establish a higher operating temperature, nitrogen, or oxygen value at a particular well. A higher operating value demonstration that provides supporting data to show that the elevated parameter does not cause fires or significantly inhibit anaerobic decomposition by killing methanogens must be approved by the Agency before such higher operating value may be used. Operating values shall be determined as follows:

1) The nitrogen level shall be determined using Method 3C, Appendix A, 40 CFR 60, incorporated by reference in Section 220.130 of this Part.

2) The oxygen level shall be determined by an oxygen meter using Method 3A, Appendix A, 40 CFR 60, incorporated by reference in Section 220.130 of this Part, except that:

- A) The span shall be set so that the regulatory limit is between 20 and 50 percent of the span;
- B) A data recorder is not required;
- C) Only two calibration gases are required, a zero and span, and ambient air may be used as the span;
- D) A calibration error check is not required; and
- E) The allowable sample bias, zero drift, and calibration drift are plus or minus 10 percent.

d) Operate the collection system so that the methane concentration is less than 500 ppm above background at the surface of the landfill. To determine if this level is exceeded, the owner or operator shall conduct surface testing around the perimeter of the collection area and along a pattern that traverses the landfill at 30-meter intervals and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover. An initial surface monitoring design plan shall be developed and included as part of the operating permit application (e.g., a CAAPP permit application) that includes a topographical map with the monitoring route and the rationale for any site-specific deviations from the 30-meter intervals. Areas with steep slopes or other dangerous areas may be excluded from the surface testing. The



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monitoring plan shall be updated as necessary. Updated copies must be sent to the Agency and kept on-site at the MSW landfill.

- e) Operate the gas collection and control system such that all collected gases are vented to a control system designed and operated in compliance with Sections 220.230, 220.250, and 220.270 of this Subpart. In the event the collection or control system is inoperable, the gas mover system shall be shut down and all valves in the collection and control system contributing to venting of the gas to the atmosphere shall be closed within 1 hour.

- f) Operate the gas collection and control or treatment system at all times, except during shutdown or malfunction, provided that the duration of start-up, shutdown, or malfunction must not exceed 5 days for collection systems and must not exceed 1 hour for treatment or control devices.

- g) If monitoring demonstrates that the operational requirements in subsection (b), (c), or (d) of this Section are not met, take corrective action as specified in Section 220.240(a)(3), (a)(5), or (c)(4) of this Subpart. If such corrective actions are taken as specified in Section 220.240(a)(3), (a)(5), or (c)(4) of this Subpart, the monitored exceedance is not a violation of the operational requirements in this Section.

- h) The collection and control system may be capped or removed provided:

- 1) The landfill is no longer accepting solid waste;
- 2) A system removal report has been submitted to the Agency, as provided in Section 220.280(d) of this Subpart;
- 3) The collection and control system has been operating a minimum of 15 years;
- 4) The calculated NMOC gas produced by the landfill is less than 50 Mg/yr on three successive test dates, pursuant to the procedures specified in Section 220.260(b) of this Subpart. The test dates shall be no less than 90 days apart, and no more than 180 days apart; and
- 5) The system is not required to satisfy any applicable requirement of 35 Ill. Adm. Code 800 through 849.

## Section 220.260 Test Methods and Procedures

- a) The landfill owner or operator shall calculate the NMOC emission rate using the equation provided in either subsection (a)(1)(A) or subsection (a)(1)(B) of this Section and make a determination that the emission rate is less than 50 Mg/yr, pursuant to subsection (a)(2), (a)(3), (a)(4), or (e), or install a gas collection and control system pursuant to Sections 220.220 and 220.230 of this Subpart. However, both equations may be used if the actual year-to-year solid waste acceptance rate is known pursuant to subsection (a)(1)(A) of this Section, for part of the life of the landfill and the actual year-to-year solid waste acceptance rate is unknown, pursuant to subsection (a)(1)(B) of this Section, for part of the life of the

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landfill. If the NMOC emission rate calculated in this subsection is less than 50 Mg/yr, then the landfill owner shall submit an emission rate report as provided in Section 220.280(b) of this Subpart, and shall recalculate the NMOC mass emission rate as required under Section 220.210(c) of this Subpart.

- 1) The values to be used in both equations are 0.05/yr for  $k$ , 170 m(3) per Mg for  $L[o]$ , and 4,000 ppmv as hexane for the  $C[NMOC]$ .

- A) The following equation shall be used if the actual year-to-year solid waste acceptance rate is known:

$$M[NMOC] = \sum_{i=1}^n 2kL[o]M[i](e^{-kt[i]})(C[NMOC])(3.6 \times 10^{-9})$$

where:

$M[NMOC]$  = Total NMOC emission rate from the landfill, Mg/yr

$k$  = methane generation rate constant, yr<sup>-1</sup>

$L[o]$  = methane generation potential, m(3) per Mg solid waste

$M[i]$  = mass of solid waste in the  $i$ (th) section, Mg

$t[i]$  = age of the solid waste in the  $i$ (th) section, years

$C[NMOC]$  = concentration of NMOC, ppmv as hexane

$3.6 \times 10^{-9}$  = conversion factor

The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating the value for  $M[i]$  if documentation of the nature and amount of such wastes is maintained.

- B) The following equation shall be used if the actual year-to-year solid waste acceptance rate is unknown:

$$M[NMOC] = 2L[o]R(e^{-kc} - e^{-kt})(C[NMOC])(3.6 \times 10^{-9})$$

where:

$M[NMOC]$  = Total NMOC emission rate from the landfill, Mg/yr

$L[o]$  = methane generation potential, m(3) per Mg solid waste

$R$  = average annual acceptance rate, Mg/yr

$k$  = methane generation rate constant, year<sup>-1</sup>

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t = age of landfill, years  
C[NMOC] = concentration of NMOC, ppmv as hexane  
c = time since closure, years (for  
active landfill c = 0 and e(-kc) = 1)  
 $3.6 \times 10^{(-9)}$  = conversion factor

The mass of nondegradable solid waste may be subtracted from the average annual acceptance rate when calculating a value for R, if documentation of the nature and amount of such wastes is maintained.

- 2) Tier 1. The landfill owner or operator shall calculate the NMOC mass emission rate using the equations provided in subsection (a)(1)(A) or (a)(1)(B) of this Section. The owner or operator shall compare the calculated NMOC mass emission rate to the standard of 50 Mg/yr using the default values for the NMOC mass emission rate and the methane generation rate constant.
- 3) Tier 2. The landfill owner or operator shall calculate the NMOC mass emission rate using the equations provided in subsection (a)(1)(A) or (a)(1)(B) of this Section using the average NMOC concentration from the collected samples instead of the default value in the equations provided in subsection (a)(1) of this Section. The landfill owner or operator shall determine the NMOC concentration using the following sampling procedure:

The landfill owner or operator shall install at least 2 sample probes per hectare of landfill surface that has retained waste for at least 2 years. If the landfill is larger than 25 hectares in area, only 50 samples are required. The sample probes should be located to avoid known areas of nondegradable solid waste. The owner or operator shall collect and analyze one sample of landfill gas from each probe to determine the NMOC concentration using Method 25C or Method 18 of Appendix A, 40 CFR 60, incorporated by reference in Section 220.130 of this Part. If using Method 18, the minimum list of compounds to be tested shall be those published in the Compilation of Air Pollutant Emission Factors (AP-42), incorporated by reference in Section 220.130 of this Part. If composite sampling is used, equal volumes shall be taken from each sample probe. If more than the required number of samples are taken, all samples shall be used in the analysis. Divide the NMOC concentration from Method 25C by 6 to convert from C[NMOC] as carbon to C[NMOC] as hexane. The owner or operator shall retest the site-specific NMOC concentration every 5 years using the methods specified in this Section.

- 4) Tier 3. The landfill owner or operator shall estimate the NMOC mass emission rate using equations in subsection (a)(1)(A) or (a)(1)(B) of this Section and using a site-specific methane generation rate constant k, and the site-specific NMOC

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concentration as determined in subsection (a)(3) of this Section instead of the default values provided in subsection (a)(1) of this Section. The site-specific methane generation rate constant shall be determined using the procedures provided in Method 2E, Appendix A, 40 CFR 60, incorporated by reference in Section 220.130 of this Part. The calculation of the methane generation rate constant is performed only once, and the value obtained is used in all subsequent annual NMOC emission rate calculations. In addition, pursuant to subsection (a)(3) of this Section, the owner or operator shall retest the site-specific NMOC concentration every 5 years using the methods specified in that subsection.

- b) After the installation of a collection and control system in compliance with Sections 220.220 and 220.230 of this Subpart, the owner or operator shall calculate the NMOC emission rate for purposes of determining when the system can be removed as provided in Section 220.250(h) of this Subpart, using the following equation:

$$M[\text{NMOC}] = 1.89 \times 10^{(-3)} Q[\text{LFG}] C[\text{NMOC}]$$

where:

M[NMOC] = mass emission rate of NMOC (Mg/yr)  
Q[LFG] = flow rate of landfill gas (m(3)/minute)  
C[NMOC] = NMOC concentration (ppmv as hexane)

- 1) The flow rate of landfill gas (Q[LFG]) shall be determined by measuring the total landfill gas flow rate at the common header pipe that leads to the control device using a gas flow measuring device calibrated according to the provisions of Section 4 of Method 2E, Appendix A, 40 CFR 60, incorporated by reference in Section 220.130 of this Part.
- 2) The average NMOC concentration (C[NMOC]) shall be determined by collecting and analyzing landfill gas sampled from the common header pipe before the gas moving or condensate removal equipment using the procedures in Method 25C or Method 18, Appendix A, 40 CFR 60, incorporated by reference in Section 220.130 of this Part. If using Method 18, the minimum list of compounds to be tested shall be those published in the Compilation of Air Pollutant Emission Factors (AP-42), incorporated by reference in Section 220.130 of this Part. The sample location on the common header pipe shall be before any condensate removal or other gas refining units. The landfill owner or operator shall divide the NMOC concentration from Method 25C by 6 to convert C[NMOC] as carbon to C[NMOC] as hexane.
- c) If the gas collection system complies with the provisions in Section 220.220 of this Subpart and is already installed, the owner or operator shall estimate the NMOC emission rate using the procedures

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provided in subsection (b) of this Section. For areas of the landfill where the owner or operator has not been required to install a well yet, he/she may select an appropriate method from subsection (a) of this Section to estimate emissions.

- d) For the performance test required in Section 220.210(d)(2) of this Subpart, Method 25C or Method 18, Appendix A, 40 CFR 60, incorporated by reference in Section 220.130 of this Part, shall be used to determine compliance with 98 weight-percent efficiency or the 20 ppmv outlet concentration level, unless another method to demonstrate compliance has been approved by the Agency as provided by Section 220.230(d) of this Subpart. If using Method 18, the minimum list of compounds to be tested shall be those published in the Compilation of Air Pollutant Emission Factors (AP-42), incorporated by reference in Section 220.130 of this Part. The following equation shall be used to calculate efficiency:

$$\text{Control efficiency} = (\text{NMOC}[\text{in}] - \text{NMOC}[\text{out}]) / (\text{NMOC}[\text{in}])$$

where:

$$\begin{aligned} \text{NMOC}[\text{in}] &= \text{mass of NMOC entering control device} \\ \text{NMOC}[\text{out}] &= \text{mass of NMOC exiting control device} \end{aligned}$$

- e) The owner or operator may use other methods to determine the NMOC concentration, site-specific k, or landfill gas flow rate, as an alternate to the methods required in subsection (a)(3) and (a)(4) of this Section, if the method has been approved by the Agency, as provided for in Section 220.220(d) or Section 220.230(d) of this Subpart.
- f) The owner or operator may use the procedures described in AP-42, Compilation of Air Pollutant Emission Factors, incorporated by reference in Section 220.130 of this Part, to estimate emissions pursuant to the annual emission report required in 35 Ill. Adm. Code 210.302(a). The most recent values for k, L<sub>0</sub>, and NMOC concentration reported in AP-42 shall be used to calculate emissions. To determine applicability of or compliance with the requirements of this Part, the owner or operator must use the tiered emission estimates provided in subsections (a)(1) through (a)(4) of this Section.
- g) Testing:
- 1) Upon a request by the Agency, the owner or operator of an MSW landfill shall at his/her own expense demonstrate compliance with the applicable requirements of this Subpart using the appropriate test method.
  - 2) An owner or operator planning to conduct a performance test to demonstrate compliance with this Subpart shall notify the Agency of that intent not less than 30 days before the planned initiation of the tests so that the Agency may observe the test.

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## Section 220.270 Monitoring of Operations

- a) Active gas collection systems. Each owner or operator of an active gas collection system shall install a sampling port and a thermometer, other temperature measuring device, or an access port for temperature measurements at each wellhead and:
  - 1) Measure the gauge pressure in the gas collection header on a monthly basis, as provided in Section 220.240(a)(3) of this Subpart; and
  - 2) Monitor the temperature and nitrogen or oxygen concentration in the landfill gas on a monthly basis, as provided in Section 220.240(a)(5) of this Subpart.
- b) Enclosed combustors. Each owner or operator of an enclosed combustor shall calibrate, maintain, and operate according to the manufacturer's specifications, the following equipment:
  - 1) A temperature monitoring device equipped with a continuous recorder and having a minimum accuracy of plus or minus 1 percent of the temperature being measured, expressed in degrees Celsius, or plus or minus 0.5°C, whichever is greater. A temperature monitoring device is not required for boilers or process heaters with design heat input capacity greater than 44 MW.
  - 2) A device that records flow to or bypass of the control device. The owner or operator shall either:
    - A) Install, calibrate, and maintain a gas flow rate measuring device that shall record the flow to the control device every 15 minutes; or
    - B) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.
- c) Open flare. Each owner or operator of an open flare shall install, calibrate, maintain, and operate according to the manufacturer's specifications the following equipment:
  - 1) A heat sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light or the flame itself to indicate the continuous presence of a flame.
  - 2) A device that records flow to or bypass of the flare. The owner or operator shall either:
    - A) Install, calibrate, and maintain a gas flow rate measuring device that shall record the flow to the control device at least every 15 minutes; or
    - B) Secure the bypass line valve in the closed position with a car-seal or lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow



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- is not diverted through the bypass line.
- d) Each owner or operator seeking to install a collection or control system that does not meet the specifications in Section 220.220(b) or (c) of this Subpart, shall provide information satisfactory to the Agency as provided in Sections 220.220(d) and 220.230(d) of this Subpart, describing the design and operation of the collection system, the operating parameters that would indicate proper performance, and appropriate monitoring procedures.
  - e) Each owner or operator shall monitor surface concentrations of methane according to the instrument specifications and procedures provided in Section 220.240(c) and (d) of this Subpart. Any closed landfill that has no monitored exceedances of the operational standard in three consecutive quarterly monitoring periods may resume annual monitoring. Any methane reading of 500 ppm or more above the background detected during the annual monitoring returns the monitoring frequency for that landfill to quarterly.

## Section 220.280 Reporting Requirements

- a) Each owner and operator shall submit a design capacity report to the Agency.
  - 1) The initial design capacity report shall be submitted no later than 90 days after the effective date of this Part.
  - 2) The initial design capacity report shall contain the following information:
    - A) A map or plot of the landfill providing the size and location of the landfill and identifying all areas where solid waste may be landfilled according to the provisions of the State or RCRA construction or operating permit.
    - B) The maximum design capacity of the landfill. If the maximum design capacity is specified in a State construction or RCRA permit, a copy of the permit specifying the maximum design capacity of the landfill shall be provided. If the maximum design capacity of the landfill is not specified in a permit, the maximum design capacity shall be calculated using good engineering practices. The calculations shall be provided, along with the relevant parameters (e.g., depth of solid waste, solid waste acceptance rate, and compaction practices, as applicable), as part of the report. The Agency may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.
    - 3) An amended design capacity report shall be submitted to the Agency providing notification of an increase in the design capacity of the landfill within 90 days after an increase in the maximum design capacity of the landfill to or above 2.5 million Mg and 2.5 million m<sup>3</sup>. This increase in design capacity may result from an increase in the permitted volume or an increase in

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- the density of the landfill as documented in the annual recalculation required in Section 220.290(f) of this Subpart.
- b) Each owner and operator with a total design capacity equal to or greater than 2.5 million Mg and 2.5 million m<sup>3</sup> shall submit an NMOOC emission rate report to the Agency initially and by June 1 annually thereafter, except as provided for in subsections (b)(1) and (b)(4) of this Section. The Agency may request such additional information as may be necessary to verify the reported NMOOC emission rate. The NMOOC emission rate report shall contain an annual or 5-year estimate of the NMOOC emission rate calculated using the formula and procedures in Section 220.260(a) of this Subpart, as applicable. The annual NMOOC emission rate report required by this subsection must be submitted with the annual emissions report required pursuant to 35 Ill. Adm. Code 201.302(a).
    - 1) The initial NMOOC emission rate report may be combined with the initial design capacity report required in subsection (a) of this Section. The first NMOOC emission report shall be filed with the Agency within 90 days after the effective date of this Part. Subsequent NMOOC emission reports shall be filed with the Agency by June 1 of the subsequent year, except as provided for in subsection (b)(2) of this Section.
    - 2) Using Tier 1, if the estimated NMOOC emission rate as reported in the annual report to the Agency is less than 50 Mg/yr in each of the next 5 consecutive years, the owner or operator may elect to submit an estimate of the NMOOC emission rate for the next 5-year period in lieu of the annual report. This estimate shall include the current amount of solid waste in-place and the estimated waste acceptance rate for each year of the 5 years for which an NMOOC emission rate is estimated. All data and calculations upon which this estimate is based shall be provided to the Agency. This estimate shall be revised at least once every 5 years. If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any year reported in the 5-year estimate, a revised 5-year estimate shall be submitted to the Agency. The revised estimate shall cover the 5-year period beginning with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate.
    - 3) The NMOOC emission rate report shall include all the data, calculations, sample reports and measurements used to estimate the annual or 5-year emissions.
    - 4) All owners and operators of MSW landfills with a total design capacity of 2.5 million Mg and 2.5 million m<sup>3</sup> are required to submit an annual emissions report pursuant to 35 Ill. Adm. Code 201.302(a). MSW landfills that have installed a gas collection and control system that meets the requirements of this Subpart are not required to submit an annual NMOOC emission rate report but are required to submit an annual emissions report pursuant to 35 Ill. Adm. Code 201.302(a). Further, owners or operators filing

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a 5-year estimate of NMOC emissions pursuant to subsection (b)(2) of this Section may use a 5-year estimate for NMOC, so long as they file an annual emission report and meet the requirements of subsection (b)(2) of this Section.

- c) Each owner or operator subject to the provisions of Section 220.220(a) of this Subpart shall submit an application for a construction permit containing the information listed in subsection (c)(3) of this Section to the Agency within 1 year after the first report, required under subsection (b) of this Section, in which the emission rate exceeds 50 Mg/yr, except as follows:

- 1) If the owner or operator elects to recalculate the NMOC emission rate after Tier 2 NMOC sampling and analysis as provided in Section 220.260(a)(3) of this Subpart and the resulting rate is less than 50 Mg/yr, annual periodic reporting shall be resumed, using the Tier 2 determined site-specific NMOC concentration, until the calculated emission rate is equal to or greater than 50 Mg/yr or the landfill is closed. The revised NMOC emission rate report, with the recalculated emission rate based on NMOC sampling and analysis, shall be submitted within 1 year after the first calculated exceedance of 50 Mg/yr.
- 2) If the owner or operator elects to recalculate the NMOC emission rate after determining a site-specific methane generation rate constant  $k$ , as provided in Tier 3 in Section 220.260(a)(4) of this Subpart, and the resulting emission rate is less than 50 Mg/yr, annual periodic reporting shall be resumed. The resulting site-specific methane generation rate constant  $k$  shall be used in the emission rate calculation until such time as the emission rate calculation results in an exceedance. The revised NMOC emission rate report based on the provisions of Section 220.260(a)(4) of this Subpart and the resulting site-specific methane generation rate constant  $k$  shall be submitted to the Agency within 1 year after the first calculated emission rate exceeding 50 Mg/yr.
- 3) In addition to the information required by 35 Ill. Adm. Code 201.152, the following shall be included in the construction permit application for the collection system required pursuant to Section 220.280(c) of this Subpart: depths of refuse, refuse gas generation rates and flow characteristics, cover properties, gas system expandability, leachate and condensate management, accessibility, compatibility with filling operations, integration with closed landfill end use, air intrusion control, corrosion resistance, fill settlement, and resistance to the refuse decomposition heat.
- d) Each owner or operator of a controlled landfill shall submit the information required by this subsection (d) to the Agency 30 days prior to removal or cessation of operation of the control equipment. The Agency may request such additional information as may be necessary to verify that all of the conditions for removal of equipment in

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accordance with Section 220.250(h) of this Subpart have been met.

- 1) Certification that the operation of the collection and control system is no longer required pursuant to 35 Ill. Adm. Code 800 through 849;
- 2) Documentation demonstrating that the 15-year minimum control period has expired; and
- 3) Dated copies of the 3 successive NMOC emission rate reports, as provided for in Section 220.250(h) of this Subpart, demonstrating that the landfill is no longer producing 50 Mg/yr or greater of NMOC, pursuant to Section 220.260(b) of this Section.
- e) Each owner or operator of a landfill shall submit to the Agency annual reports of the recorded information in subsections (e)(1) through (e)(6) of this Section. The initial annual report shall be submitted within 180 days after installation and start-up of the collection and control system, and may be included with the report of the initial performance test required pursuant to Section 220.210(d)(2) of this Subpart. For enclosed combustion devices and flares, reportable exceedances are defined under Section 220.290(c) of this Subpart.
  - 1) Value and length of time for exceedance of applicable parameters monitored under Section 220.270(a), (b), (c), and (d) of this Subpart.
  - 2) Description and duration of all periods when the gas stream is diverted from the control device through a bypass line or the indication of bypass flow as specified under Section 220.270 of this Subpart.
  - 3) Description and duration of all periods when the control device was not operating for a period exceeding 1 hour and length of time the control device was not operating.
  - 4) All periods when the collection system was not operating in excess of 5 days.
  - 5) The location of each exceedance of the 500 ppm methane concentration, as provided in Section 220.250(d) of this Subpart, and the concentration recorded at each location for which an exceedance was recorded in the previous month.
  - 6) The date of installation and the location of each well or collection system expansion added pursuant to subsections (a)(3), (b), and (c)(4) of Section 220.240 of this Subpart.
- f) Each owner or operator shall include the following information with the initial performance test report and any subsequent performance tests required pursuant to Section 220.210(d)(2) of this Subpart.
  - 1) A diagram of the collection system showing collection system positioning including all wells, horizontal collectors, surface collectors, or other gas extraction devices, including the locations of any areas excluded from collection and the proposed sites for the future collection system expansion;
  - 2) The data upon which the sufficient density of wells, horizontal collectors, surface collectors, or other gas extraction devices and the gas mover equipment sizing are based;



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- 3) The documentation of the presence of asbestos or nondegradable material for each area from which collection wells have been excluded based on the presence of asbestos or nondegradable material;
- 4) The sum of gas generation flow rates for all areas from which collection wells have been excluded based on nonproductivity and the calculations of gas generation flow rate for each excluded area;
- 5) Provisions for increasing gas mover equipment capacity with increased gas generation flow rate, if the present gas mover equipment is inadequate to move the maximum flow rate expected over the life of the landfill; and
- 6) The provisions for the control of off-site migration of gas.

**Section 220.290 Recordkeeping Requirements**

Each owner or operator of an MSW landfill shall keep for at least 5 years, unless another time period is specified in this Section, up-to-date, readily accessible, on-site records of the following:

- a) For the life of the landfill, the design capacity report in which the landfill became equal to or greater than 2.5 million Mg and 2.5 million m(3), the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Off-site records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic formats are acceptable.
- b) For the life of the control equipment, the data listed in subsections (b)(1) through (b)(4) of this Section as measured during the initial performance test or compliance determination. Records of the control device vendor specifications shall be maintained until removal.

## 1) Active collection systems:

- A) The maximum expected gas generation flow rate as calculated in Section 220.240(a) of this Subpart. The owner or operator may use another method to determine the maximum gas generation flow rate, if the method has been approved by the Agency.
  - B) The density of wells, horizontal collectors, surface collectors, or other gas extraction devices determined using the procedures specified in Section 220.220(b)(1)(A) of this Subpart.
- 2) Enclosed combustion device other than a boiler or process heater with a design heat input capacity greater 44 MW:
    - A) The combustion temperature measured at least every 15 minutes and averaged over the same time period as the performance test.
    - B) The percent reduction of NMOC determined as specified in Section 220.230(b) of this Subpart achieved by the control device.
  - 3) Boilers or process heaters of any size: a description of the

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location at which the collected gas vent stream is introduced into the boiler or process heater over the same time period as the performance testing.

- 4) Open flare: the flare type (i.e., steam-assisted, air-assisted, or nonassisted), all visible emission readings, heat content determination, flow rate or bypass flow rate measurements, and exit velocity determinations made during the performance test as specified in 40 CFR 60.18, incorporated by reference in Section 220.130 of this Part; continuous records of the flare pilot flame or flare flame monitoring and records of all periods of operations during which the pilot flame or the flare flame is absent.
- c) Continuous records of the equipment operating parameters specified to be monitored in Section 220.270 of this Subpart as well as up-to-date, readily accessible records for periods of operation during which the parameter boundaries established during the most recent performance test are exceeded.
  - 1) The following constitute exceedances that shall be recorded and reported under Section 220.280(e) of this Subpart:
    - A) For enclosed combustors, except for boilers and process heaters with design heat input of 44 MW (150 mmbtu/hr) or greater, all 3-hour periods of operation during which the average combustion temperature was more than 28°C (82°F) below the average combustion temperature during the most recent performance test at which compliance with Section 220.230(b) of this Subpart was determined.
    - B) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone, as required pursuant to subsection (b)(2)(A) of this Section.
  - 2) Continuous records of the indication of flow to the control device or the indication of bypass flow or records of monthly inspections of car-seals or lock-and-key configurations used to seal bypass lines, specified pursuant to Section 220.270 of this Subpart.
  - 3) For boilers or process heaters with a design heat input capacity of 44 MW or greater, records of all periods of operation of boiler or process heater. (Examples of such records include records of steam use, fuel use, or monitoring data collected pursuant to State, local, or federal regulatory requirements.)
  - 4) For open flares, records of the flame or flare pilot flame monitoring specified under Section 220.270(c) of this Subpart, and all periods of operation in which the flame or flare pilot flame is absent.
- d) For the life of the collection system, a plot map showing each existing and planned collector in the system and providing a unique identification location label for each collector, including:
  - 1) The location of all newly installed collectors as specified under



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- Section 220.240(b) of this Part.
- 2) The nature, date of deposition, amount, and location of asbestos-containing or nondegradable waste excluded from collection, as provided in Section 220.220(b)(1)(D)(i) of this Subpart, as well as any nonproductive areas excluded from collection, as provided in Section 220.220(b)(1)(D)(ii) of this Subpart.
- e) All collection and control system exceedances of the operational standards in Section 220.250 of this Subpart, the reading the subsequent month whether or not the second reading is an exceedance, and the location of each exceedance.
- f) Owners or operators who convert design capacity from volume to mass or mass to volume to demonstrate that landfill design capacity is less than 2.5 million Mg or 2.5 million m(3), as provided in the definition of "design capacity", shall keep records of the annual recalculation of site-specific density, design capacity, and the supporting documentation.

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- 1) Heading of the Part: Permits and General Provisions
- 2) Code Citation: 35 Ill. Adm. Code 201
- 3) Section Numbers: Proposed Action:  
201.103 Amend  
201.146 Amend
- 4) Statutory Authority: 415 ILCS 5/4, 9.1, 27 and 28.5
- 5) A Complete Description of the Subjects and Issues Involved: This proposed Docket 98-28 was filed by the Illinois EPA with the Board on March 13, 1998. As explained in more detail in the Board's opinion of March 19, 1998, available at the Clerk's office at the address noted below at #11, the proposed amendments are part of the Illinois proposal to implement the emission guidelines for municipal solid waste landfills (MSW) in Illinois. The proposed amendments exempt owners or operators of municipal solid waste landfills from the requirement to obtain an operating permit if their landfill has a design capacity less than 2.5 million megagrams and 2.5 million cubic meters and they are not required to obtain an operating permit to meet other requirements, e.g., operation of a flare or other control device. In addition, amendments are proposed to add the appropriate abbreviations.

- 6) Will this proposed rule(s) replace an emergency rule currently in effect?  
No

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Does this proposed amendment contain incorporations by reference? Yes

- 9) Are there any other proposed amendments pending on this Part? Yes

Section Numbers	Proposed Action	Illinois Register Citation
201.152	Amendment	21 Ill. Reg. 16023
201.153	Repeal	21 Ill. Reg. 16023
201.154	Repeal	21 Ill. Reg. 16023
201.155	Repeal	21 Ill. Reg. 16023
201.157	Amendment	21 Ill. Reg. 16023
201.158	Amendment	21 Ill. Reg. 16023
201.159	Amendment	21 Ill. Reg. 16023
201.160	Amendment	21 Ill. Reg. 16023
201.162	Amendment	21 Ill. Reg. 16023
201.163	Amendment	21 Ill. Reg. 16023
201.164	Amendment	21 Ill. Reg. 16023
201.169	Add	21 Ill. Reg. 16023
201.180	Repeal	21 Ill. Reg. 16023

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201.181 Repeal 21 Ill. Reg. 16023  
 201.187 Repeal 21 Ill. Reg. 16023  
 201.207 Amendment 21 Ill. Reg. 16023

- 10) Statement of Statewide Policy Objectives: The proposed Part is brought under the authority of Sections 4, 9.1, 27, and 28.5 of the Environmental Protection Act. The rules are proposed by the Illinois EPA and are required to be adopted by the State under Section 111(d) of the Clean Air Act (CAA). The implementation of the emission guidelines for MSW landfills is required by Section 111(d) of the CAA. The proposed rules will become part of the State Plan to be submitted to the United States Environmental Protection Agency (USEPA) for approval, implementing the emission guidelines for MSW landfills. The proposed State Plan includes existing programs for permitting and enforcement for air pollution sources, and an agreement with the USEPA to file periodic reports. This proposal has been reviewed by the USEPA and found to meet the pertinent federal requirements. The exemption of owners and operators of smaller landfills from the requirement of obtaining an operating permit is appropriate in these circumstances where this size MSW landfill, unless it has a pollution control device installed, is not subject to control requirements under 35 Ill. Adm. Code Subtitle B.

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking? Send written comments concerning this rulemaking within 45 days after publication in the *Illinois Register* to:

Dorothy Gunn  
 Clerk of the Illinois Pollution Control Board  
 100 West Randolph Street  
 Suite 11-500  
 Chicago, IL 60601

and

Rachel L. Doctors  
 Assistant Counsel  
 Illinois Environmental Protection Agency  
 1021 N. Grand Avenue East  
 Springfield, IL 62702

Questions concerning this rule should be directed Catherine Glenn at (312) 814-6923 or (815) 753-0947.

- 12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Owners and operators of municipal solid waste landfills

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

B) Reporting, bookkeeping or other procedures required for compliance:  
 No additional requirements

C) Types of professional skills necessary for compliance: None

- 13) Regulatory Agenda on which this rulemaking was summarized: January 1998

The full text of the Proposed Amendments begins on the next page:

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 35: ENVIRONMENTAL PROTECTION

## SUBTITLE B: AIR POLLUTION

## CHAPTER I: POLLUTION CONTROL BOARD

## SUBCHAPTER a: PERMITS AND GENERAL PROVISIONS

## PART 201

## PERMITS AND GENERAL PROVISIONS

## SUBPART A: DEFINITIONS

## Section

201.101 Other Definitions

201.102 Definitions

201.103 Abbreviations and Units

201.104 Incorporations by Reference

## SUBPART B: GENERAL PROVISIONS

## Section

201.121 Existence of Permit No Defense

201.122 Proof of Emissions

201.123 Burden of Persuasion Regarding Exceptions

201.124 Annual Report

201.125 Severability

201.126 Repealer

## SUBPART C: PROHIBITIONS

## Section

201.141 Prohibition of Air Pollution

201.142 Construction Permit Required

201.143 Operating Permits for New Sources

201.144 Operating Permits for Existing Sources

201.146 Exemptions from State Permit Requirements

201.147 Former Permits

201.148 Operation Without Compliance Program and Project Completion Schedule

201.149 Operation During Malfunction, Breakdown or Startups

201.150 Circumvention

201.151 Design of Effluent Exhaust Systems

## SUBPART D: PERMIT APPLICATIONS AND REVIEW PROCESS

## Section

201.152 Contents of Application for Construction Permit

201.153 Incomplete Applications

201.154 Signatures

201.155 Standards for Issuance

201.156 Conditions

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## 201.157 Contents of Application for Operating Permit

201.158 Incomplete Applications

201.159 Signatures

201.160 Standards for Issuance

201.161 Conditions

201.162 Duration

201.163 Joint Construction and Operating Permits

201.164 Design Criteria

201.165 Hearings

201.166 Revocation

201.167 Revisions to Permits

201.168 Appeals from Conditions

SUBPART E: SPECIAL PROVISIONS FOR OPERATING  
PERMITS FOR CERTAIN SMALLER SOURCES

## Section

201.180 Applicability

201.181 Expiration and Renewal

201.187 Requirement for a Revised Permit

## SUBPART F: CAAPP PERMITS

## Section

201.207 Applicability

201.208 Supplemental Information

201.209 Emissions of Hazardous Air Pollutants

201.210 Categories of Insignificant Activities or Emission Levels

201.211 Application for Classification as an Insignificant Activity

201.212 Revisions to Lists of Insignificant Activities or Emission Levels

## SUBPART G: EXPERIMENTAL PERMITS (RESERVED)

SUBPART H: COMPLIANCE PROGRAMS AND PROJECT COMPLETION  
SCHEDULES

## Section

201.241 Contents of Compliance Program

201.242 Contents of Project Completion Schedule

201.243 Standards for Approval

201.244 Revisions

201.245 Effects of Approval

201.246 Records and Reports

201.247 Submission and Approval Dates

## SUBPART I: MALFUNCTIONS, BREAKDOWNS OR STARTUPS

## Section



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- 201.261 Contents of Request for Permission to Operate During a Malfunction, Breakdown or Startup
- 201.262 Standards for Granting Permission to Operate During a Malfunction, Breakdown or Startup
- 201.263 Records and Reports
- 201.264 Continued Operation or Startup Prior to Granting of Operating Permit
- 201.265 Effect of Granting of Permission to Operate During a Malfunction, Breakdown or Startup

SUBPART J: MONITORING AND TESTING

- Section
- 201.281 Permit Monitoring Equipment Requirements
- 201.282 Testing
- 201.283 Records and Reports

SUBPART K: RECORDS AND REPORTS

- Section
- 201.301 Records
- 201.302 Reports

SUBPART L: CONTINUOUS MONITORING

- Section
- 201.401 Continuous Monitoring Requirements
- 201.402 Alternative Monitoring
- 201.403 Exempt Sources
- 201.404 Monitoring System Malfunction
- 201.405 Excess Emission Reporting
- 201.406 Data Reduction
- 201.407 Retention of Information
- 201.408 Compliance Schedules

- APPENDIX A Rule into Section Table
- APPENDIX B Section into Rule Table
- APPENDIX C Past Compliance Dates

AUTHORITY: Implementing Sections 10, 39, and 39.5 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/10, 27, 39, and 39.5].

SOURCE: Adopted as Chapter 2: Air Pollution, Part I: General Provisions, in R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R78-3 and 4, 35 PCB 75 and 243, at 3 Ill. Reg. 30, p. 124, effective July 28, 1979; amended in R80-5, at 7 Ill. Reg. 1244, effective January 21, 1983; codified at 7 Ill. Reg. 13579; amended in R82-1 (Docket A) at 10 Ill. Reg. 12628, effective July 7, 1986; amended in R87-38 at 13 Ill. Reg. 2066, effective February 3, 1989; amended in R89-7(A) at 13 Ill. Reg. 19444, effective December 5, 1989; amended

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in R89-7(B) at 15 Ill. Reg. 17710, effective November 26, 1991; amended in R93-11 at 17 Ill. Reg. 21483, effective December 7, 1993; amended in R94-12 at 18 Ill. Reg. 15002, effective September 21, 1994; amended in R94-14 at 18 Ill. Reg. 15760, effective October 17, 1994; amended in R96-17 at 21 Ill. Reg. 7878, effective June 17, 1997; amended in R98-28 at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: DEFINITIONS

Section 201.103 Abbreviations and Units

- a) The following abbreviations have been used in this Part:

btu or Btu	British thermal units (60° F)
gal	gallons
hp	horsepower
hr	hour
gal/mo	gallons per month
gal/yr	gallons per year
kPa	kilopascals
kPa absolute	kilopascals absolute
kW	kilowatts
l	liters
Mg	megagrams
m(3)	cubic meters
mm or M	million
MW	megawatts; one million watts
NMOC	nonmethane organic compounds
psi	pounds per square inch
psia	pounds per square inch absolute
yr	year

- b) The following conversion factors have been used in this Part:

English	Metric
1 gal	3.785 l
1000 gal	3.785 m(3) cubic-meters
1 hp	0.7452 kW
1 mmbtu/hr	0.293 MW
1 psi	6.897 kPa

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

SUBPART C: PROHIBITIONS

Section 201.146 Exemptions from State Permit Requirements

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Construction or operating permits, pursuant to Sections 201.142, 201.143 and 201.144 of this Part, are not required for the classes of equipment and activities listed below in this Section. The permitting exemptions in this Section do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements, including the obligation to obtain a permit pursuant to Sections 9.1(d) and 39.5 of the Act, Sections 165, 173 and 502 of the Clean Air Act or any other applicable permit or registration requirements.

- a) Air contaminant detectors or recorders, combustion controllers or combustion shutoffs;
- b) Air conditioning or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment;
- c) Each fuel burning emission unit for indirect systems and for heating and reheating furnace systems used exclusively for residential, or commercial establishments using gas and/or fuel oil exclusively with a design heat input capacity of less than 14.6 MW (50 mmBtu/hr), except that a permit shall be required for any such emission unit with a design heat input capacity of at least 10 mmBtu/hr that was constructed, reconstructed or modified after June 9, 1989 and that is subject to 40 CFR 60, Subpart D;
- d) Each fuel burning emission unit other than those listed in subsection (c) of this Section for direct systems used for comfort heating purposes and indirect heating systems with a design heat input capacity of less than 2930 kW (10 mmBtu/hr);
- e) Internal combustion engines or boilers (including the fuel system) of motor vehicles, locomotives, air craft, watercraft, lifttrucks and other vehicles powered by nonroad engines;
- f) Bench scale laboratory equipment and laboratory equipment used exclusively for chemical and physical analysis, including associated laboratory fume hoods, vacuum producing devices and control devices installed primarily to address potential accidental releases;
- g) Coating operations located at a source using not in excess of 18,925 l (5,000 gal) of coating (including thinner) per year;
- h) Any emission unit acquired exclusively for domestic use, except that a permit shall be required for any incinerator and for any fuel combustion emission unit using solid fuel with a design heat input capacity of 14.6 MW (50 mmBtu/hr) or more;
- i) Any stationary internal combustion engine with a rated power output of less than 1118 kW (1500 horsepower), except that a permit shall be required for any stationary gas turbine engine with a rated heat input at peak load of 10.7 gigajoules/hr (10 mmBtu/hr) or more that is constructed, reconstructed or modified after October 3, 1977 and that is subject to requirements of 40 CFR 60, Subpart GG;
- j) Rest room facilities and associated cleanup operations, and stacks or vents used to prevent the escape of sewer gases through plumbing traps;
- k) Safety devices designed to protect life and limb, provided that a permit is not otherwise required for the emission unit with which the

## POLLUTION CONTROL BOARD

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safety device is associated;

- l) Storage tanks for liquids for retail dispensing except for storage tanks that are subject to the requirements of 35 Ill. Adm. Code 215.583(a)(2), 218.583(a)(2) or 219.583(a)(2);
- m) Printing operations with aggregate organic solvent usage that never exceeds 2,839 l (750 gal) per year from all printing lines at the source, including organic solvent from inks, diluents, fountain solutions and cleaning materials;
- n) Storage tanks of:

- 1) Organic liquids with a capacity of less than 37,850 l (10,000 gal), provided the storage tank is not used to store any material listed as a hazardous air pollutant pursuant to Section 112(b) of the Clean Air Act, and provided the storage tank is not subject to the requirements of 35 Ill. Adm. Code 215.583(a)(2), 218.583(a)(2) or 219.583(a)(2);
  - 2) Any size containing exclusively soaps, detergents, surfactants, waxes, glycerin, vegetable oils, greases, animal fats, sweetener, corn syrup, aqueous salt solutions or aqueous caustic solutions, provided an organic solvent has not been mixed with such materials; or
  - 3) Any size containing virgin or re-refined distillate oil, hydrocarbon condensate from natural gas pipeline or storage systems, lubricating oil or residual fuel oils.
- o) Threaded pipe connections, vessel manways, flanges, valves, pump seals, pressure relief valves, pressure relief devices and pumps;
  - p) Sampling connections used exclusively to withdraw materials for testing and analyses;
  - q) All storage tanks of Illinois crude oil with capacity of less than 151,400 l (40,000 gal) located on oil field sites;
  - r) All organic material-water single or multiple compartment effluent water separator facilities for Illinois crude oil of vapor pressure of less than 34.5 kPa absolute (5 psia);
  - s) Grain-handling operations, exclusive of grain-drying operations, with an annual grain throughput not exceeding 300,000 bushels;
  - t) Grain-drying operations with a total grain-drying capacity not exceeding 750 bushels per hour for 5% moisture extraction at manufacturer's rated capacity, using the American Society of Agricultural Engineers Standard 248.2, Section 9, Basis for Stating Drying Capacity of Batch and Continuous-Flow Grain Dryers;
  - u) Portable grain-handling equipment and one-turn storage space;
  - v) Cold cleaning degreasers that are not in-line cleaning machines, where the vapor pressure of the solvents used never exceeds 2 kPa (15 mmHg or 0.3 psi) measured at 38C (100F) or 0.7 kPa (5 mmHg or 0.1 psi) at 20C (68F);
  - w) Coin-operated dry cleaning operations;
  - x) Dry cleaning operations at a source that consume less than 30 gallons per month of perchloroethylene;
  - y) Brazing, soldering, wave soldering or welding equipment, including

## POLLUTION CONTROL BOARD

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associated ventilation hoods;

- z) Cafeterias, kitchens, and other similar facilities, including smokehouses, used for preparing food or beverages, but not including facilities used in the manufacturing and wholesale distribution of food, beverages, food or beverage products, or food or beverage components;

aa) Equipment for carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, sand blast cleaning, shot blasting, shot peening, or polishing ceramic artwork, leather, metals (other than beryllium), plastics, concrete, rubber, paper stock, wood or wood products, where such equipment is either:

- 1) Used for maintenance activity;
- 2) Manually operated;
- 3) Exhausted inside a building; or
- 4) Vented externally with emissions controlled by an appropriately operated cyclonic inertial separator (cyclone), filter, electro-static precipitator or a scrubber.

abb) Feed mills that produce no more than 10,000 tons of feed per calendar year, provided that a permit is not otherwise required for the source pursuant to Section 201.142, 201.143 or 201.144;

acc) Extruders used for the extrusion of metals, minerals, plastics, rubber or wood, excluding:

- 1) Extruders used in the manufacture of polymers;
- 2) Extruders using foaming agents or release agents that contain volatile organic materials or Class I or II substances subject to the requirements of Title VI of the Clean Air Act; and
- 3) Extruders processing scrap material that was produced using foaming agents containing volatile organic materials or Class I or II substances subject to the requirements of Title VI of the Clean Air Act.

add) Furnaces used for melting metals, other than beryllium, with a brim full capacity of less than 450 cubic inches by volume;

aee) Equipment used for the melting or application of less than 22,767 kg/yr (50,000 lbs/yr) of wax to which no organic solvent has been added;

aff) Equipment used for filling drums, pails or other packaging containers, excluding aerosol cans, with soaps, detergents, surfactants, lubricating oils, waxes, vegetable oils, greases, animal fats, glycerin, sweeteners, corn syrup, aqueous salt solutions or aqueous caustic solutions, provided an organic solvent has not been mixed with such materials;

agg) Loading and unloading systems for railcars, tank trucks, or watercraft that handle only the following liquid materials: soaps, detergents, surfactants, lubricating oils, waxes, glycerin, vegetable oils, greases, animal fats, sweetener, corn syrup, aqueous salt solutions or aqueous caustic solutions, provided an organic solvent has not been mixed with such materials;

ahh) Equipment used for the mixing and blending of materials at ambient

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temperatures to make water based adhesives, provided each material mixed or blended contains less than 5% organic solvent by weight;

aii) Die casting machines where a metal or plastic is formed under pressure in a die located at a source with a throughput of less than 2,000,000 lbs of metal or plastic per year, in the aggregate, from all die casting machines;

aij) Air pollution control devices used exclusively with other equipment that is exempt from permitting, as provided in this Section;

akk) An emission unit for which a registration system designed to identify sources and emission units subject to emission control requirements is in place, such as the registration system found at 35 Ill. Adm. Code 218.586 (Gasoline Dispensing Operations - Motor Vehicle Fueling Operations) and 35 Ill. Adm. Code 218, Subpart HH (Motor Vehicle Refinishing);

all) Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy;

amm) Equipment used for hydraulic or hydrostatic testing;

ann) General vehicle maintenance and servicing activities conducted at a source, motor vehicle repair shops, and motor vehicle body shops, but not including:

- 1) Gasoline fuel handling; and
- 2) Motor vehicle refinishing.

aoe) Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing, provided no organic solvent has been added to the water;

app) Administrative activities including, but not limited to, paper shredding, copying, photographic activities and blueprinting machines. This does not include incinerators;

aqg) Laundry dryers, extractors, and tumblers processing that have been cleaned with water solutions of bleach or detergents that are:

- 1) Located at a source and process clothing, bedding and other fabric items used at the source, provided that any organic solvent present in such items before processing that is retained from cleanup operations shall be addressed as part of the VOM emissions from use of cleaning materials;
- 2) Located at a commercial laundry; or
- 3) Coin operated.

arr) Housekeeping activities for cleaning purposes, including collecting spilled and accumulated materials, including operation of fixed vacuum cleaning systems specifically for such purposes, but not including use of cleaning materials that contain organic solvent;

ass) Refrigeration systems, including storage tanks used in refrigeration systems, but excluding any combustion equipment associated with such systems;

att) Activities associated with the construction, on-site repair, maintenance or dismantlement of buildings, utility lines, pipelines, wells, excavations, earthworks and other structures that do not constitute emission units;



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auuu) Piping and storage systems for natural gas, propane and liquefied petroleum gas;

avvv) Water treatment or storage systems, as follows:

- 1) Systems for potable water or boiler feedwater
- 2) Systems, including cooling towers, for process water, provided that such water has not been in direct or indirect contact with process streams that contain volatile organic material or materials listed as hazardous air pollutants pursuant to Section 112(b) of the Clean Air Act.

awww) Lawn care, landscape maintenance and grounds keeping activities;

axxx) Containers, reservoirs or tanks used exclusively in dipping operations to coat objects with oils, waxes or greases, provided no organic solvent has been mixed with such materials;

ayyy) Use of consumer products, including hazardous substances as that term is defined in the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), where the product is used at a source in the same manner as normal consumer use;

azzz) Activities directly used in the diagnosis and treatment of disease, injury or other medical condition;

baaaa) Activities associated with the construction, repair or maintenance of roads or other paved or open areas, including operation of street sweepers, vacuum trucks, spray trucks and other vehicles related to the control of fugitive emissions of such roads or other areas;

bbbb) Storage and handling of drums or other transportable containers, where the containers are sealed during storage and handling;

bcccc) Activities at a source associated with the maintenance, repair or dismantlement of an emission unit or other equipment installed at the source, not including the shutdown of the unit or equipment, including preparation for maintenance, repair or dismantlement, and preparation for subsequent startup, including preparation of a shutdown vessel for entry, replacement of insulation, welding and cutting, and steam purging of a vessel prior to startup;

bdddd) Equipment used for corona arc discharge surface treatment of plastic with a power rating of 5 kW or less or equipped with an ozone destruction device;

beeee) Equipment used to seal or cut plastic bags for commercial, industrial or domestic use; and

bffff) Each direct-fired gas dryer used for a washing, cleaning, coating or printing line, excluding:

- 1) Dryers with a rated heat input capacity of 2930 kW (10 mmbtu/hr) or more; and
- 2) Dryers for which emissions other than those attributable to combustion of fuel in the dryer, including emissions attributable to use or application of cleaning agents, washing materials, coatings or inks or other process materials that contain volatile organic material are not addressed as part of the permitting of such line, if a permit is otherwise required for the line; and-

bgg) Municipal solid waste landfills with a maximum total design capacity

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of less than 2.5 million Mg or 2.5 million m(3) that are not required to install a gas collection and control system pursuant to 35 Ill. Adm. Code 220 or 800 through 849, or Section 9.1 of the Act.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF PUBLIC HEALTH

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1) Heading of the Part: Illinois Plumbing Code

2) Code Citation: 77 Ill. Adm. Code 890

3) Section Numbers: Proposed Action:

890.120	Amendment
890.210	Amendment
890.230	Amendment
890.430	Amendment
890.520	Amendment
890.630	Amendment
890.640	Amendment
890.650	Amendment
890.680	Amendment
890.810	Amendment
890.1130	Amendment
890.1140	Amendment
890.1150	Amendment
890.1210	Amendment
890.1230	Amendment
APPENDIX A-TABLE A	Amendment
APPENDIX A-TABLE B	Amendment
APPENDIX A-TABLE M	Amendment
APPENDIX A-TABLE N	Amendment
APPENDIX A-TABLE O	Amendment
APPENDIX A-TABLE P	Amendment

4) Statutory Authority: Section 35 of the Illinois Plumbing License Law [225 ILCS 320/35].

5) A Complete Description of the Subject and Issues Involved: This rulemaking establishes new definitions and corrects the address of a national testing agency. Additional materials have been added for safe pan construction along with materials not acceptable for trench drains or interceptors used for the discharge of gas and oil substances. In addition, the rulemaking permits the use of tempered water, removes the requirement for all lavatories in public areas to have self-closing faucets, and allows the use of bathtub liners. Child/juvenile water closets will no longer be required within child care facilities licensed by the Department of Children and Family Services. Relief valves may be substituted in lieu of expansion tanks for manufactured homes. The rulemaking prohibits the installation of water lines where they may freeze and requires all receptors receiving indirect waste to be in the same room as the unit discharging such wastes. The table of materials for water service pipe and water distribution pipe has been modified to prohibit specified materials in certain areas. The limitation restricting use of 1.6 gpf water closets to only single family residences has been removed.

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The required number of water fountains for mercantile units, malls, and stores has been reduced, and the requirement to count sillcocks as water supply fixture units is being eliminated.

- 6) Will this Rulemaking Replace an Emergency Rule Currently in Effect? No
- 7) Does this Rulemaking Contain an Automatic Repeal Date? No
- 8) Does this Rulemaking Contain any Incorporations by Reference? Yes
- 9) Are there any other Proposed Amendments Pending on this Part? No
- 10) Statement of Statewide Policy Objectives: Will not create or expand a State mandate on units of local government.

11) Time, Place, and Manner in which Interested Persons May Comment on this Rulemaking: Interested persons may present their comments concerning these rules, within 45 days after this issue of the *Illinois Register*, by writing to:

Gail M. DeVito  
Division of Legal Services  
Illinois Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, Illinois 62761  
(217)782-2043  
E-mail: rules@idph.state.il.us

These rules may have an impact on small businesses. Any small business commenting on these rules shall indicate their status as such in their comments.

12) Initial Regulatory Flexibility Analysis:

A) Type of Small Businesses Affected: Plumbers and plumbing contractors

B) Reporting, bookkeeping or Other Procedures Required for Compliance: No new procedures will be required.

C) Types of Professional Skills Necessary for Compliance: Technical

13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent Regulatory Agendas because: the decision to promulgate the rulemaking was not made when the Regulatory Agenda was finalized.

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF PUBLIC HEALTH

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TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER I: WATER AND SEWAGE

## PART 890

## ILLINOIS PLUMBING CODE

## SUBPART A: DEFINITIONS AND GENERAL REGULATIONS

Section  
890.110 General Regulations

890.120 Definitions

890.130 Incorporation by Reference

890.140 Repairs and Alterations

890.150 Workmanship

890.160 Used Plumbing Material, Equipment, Fixtures

890.170 Sewer and/or Water Required

890.180 Sewer and Water Pipe Installation

890.190 Piping Measurements

890.200 Operation of Plumbing Equipment

## SUBPART B: PLUMBING MATERIALS

## Section

890.210 Materials

890.220 Identification

890.230 Safe Pan Material

## SUBPART C: JOINTS AND CONNECTIONS

## Section

890.310 Tightness

890.320 Types of Joints

890.330 Special Joints

890.340 Use of Joints

890.350 Unions

890.360 Water Closet and Pedestal Urinal

890.370 Prohibited Joints and Connections in Drainage Systems

890.380 Increases and Reducers

## SUBPART D: TRAPS AND CLEANOUTS

## Section

890.410 Traps

890.420 Pipe Cleanouts

890.430 Cleanout Equivalent

890.440 Acid-Proof Traps

## DEPARTMENT OF PUBLIC HEALTH

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## SUBPART E: INTERCEPTORS - SEPARATORS AND BACKWATER VALVES

## Section

890.510 Grease Interceptor Requirements

890.520 Gasoline, Oil and Flammable Liquids

890.530 Sand, Bottle and Slaughter Houses

890.540 Laundries

890.550 Backwater Valves - Sanitary System and Storm System

## SUBPART F: PLUMBING FIXTURES

## Section

890.610 General Requirements - Material and Design

890.620 Overflows

890.630 Installation

890.640 Prohibited Fixtures

890.650 Water Closets

890.660 Urinals

890.670 Strainers and Fixture Outlets

890.680 Lavatories

890.690 Shower Receptors and Compartments

890.700 Sinks

890.710 Food Waste Disposal Units

890.720 Drinking Fountains

890.730 Floor Drains

890.740 Kidney Dialysis Machines

890.750 Whirlpool Bathtubs

890.760 Pressure Type Water Treatment Units

890.770 Dishwashing Machines

890.780 Garbage Can Washers

890.790 Laundry Trays and Drains

890.800 Special Fixtures and/or Items Designed for a Particular Purpose

890.810 Minimum Number of Plumbing Fixtures

## SUBPART G: HANGERS, ANCHORS AND SUPPORTS

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AUTHORITY: Implementing and authorized by Section 35 of the Illinois Plumbing License Law [225 ILCS 320/35].

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Note: In this Part, superscript numbers or letters are denoted by parentheses and subscript are denoted by brackets, unless the context clearly indicates otherwise.

SUBPART A: DEFINITIONS AND GENERAL REGULATIONS

Section 890.120 Definitions

For the purpose of administering and enforcing this Part, the following terms which consist of words or expressions that have a precise meaning in plumbing shall have the meaning indicated:

"Abutting": Abutting means to border, to touch, to terminate at point of contact, adjacent.

"Accessible": Accessible means easily approached or entered with minor modifications such as the removal of an access panel, door or similar obstruction (e.g., sheetrock or paneling).

"Air Gap": The air gap in a water-supply system is the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank or plumbing fixture and the flood-level rim of the receptacle. (See Appendix B: Illustrations A and B.)

"Anchor": An approved support for securing pipe, fixtures, and equipment to walls, ceilings, floors, or any other structural members.

"Antimicrobial": An additive or surface coating that prohibits the growth of bacteria or staphylococci.



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"Anti-siphon Ball Cock": An anti-siphon ball cock is a device consisting of a float valve with a flow-splitter to provide for tank and trap refill, which has an integral vacuum breaker, and which is used in conjunction with water closet flush tanks.

"Approved": Approved means accepted or acceptable under an applicable specification stated or cited in this Part or accepted as suitable for the proposed use.

"Area Drain": A drain placed in the floor of a basement area, a depressed or basement entry way, a loading platform, or a paved driveway which cannot otherwise be drained.

"Aspirator": A device supplied with fluid under positive pressure which passes through an integral orifice or constriction causing a partial vacuum. Any apparatus for producing a movement of fluid by the suction of that partial vacuum.

"Atmospheric Vacuum Breaker": A device consisting of a soft disc, reaction cup, stem guide with machined brass or other metal seat and large hooded atmospheric vent port used to prevent back siphonage.

"Back Pressure": Back pressure is a condition where reverse pressure exceeds the pressure in the intended (normal) direction, or exceeds the usual pressure of flow or thrust. Such back pressure can cause liquid or air to flow in the direction opposite to the normal direction of flow.

"Back Siphonage": The flowing back (or backflow) of fluid from a plumbing fixture, vessel or other source caused by a negative pressure.

"Back Siphonage Preventer": A device designed to prevent reverse flow in a water system, specifically back siphonage. The device should be used only where no backpressure may occur.

"Back Water Valve": A device or valve that is installed in a sanitary sewer, storm drain or storm sewer to prevent sewage or drainage from backing up.

"Backflow": Backflow is the reversal of flow from that normally intended. Back siphonage is one type of backflow.

"Backflow Connection": Backflow connection or condition is any arrangement whereby backflow can occur.

"Backflow Preventer": A backflow preventer is a device to prevent backflow into the potable water supply system. A device which

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prevents contaminated water or liquids from being siphoned or pushed from back pressure into the potable water supply system.

"Backflow Preventer, Double Check Valve Backflow Preventer Assembly (DCV)": A double check valve backflow preventer assembly is a device covered by ASSE Standard #1015-1988, for intermittent or continuous use, low hazard conditions and consists of valves located at each end of the device. It is also supplied with test cocks.

"Backflow Preventer, Double Check Backflow Preventer with Intermediate Atmospheric Vent Assembly": A double check backflow preventer with an intermediate atmospheric vent assembly is covered by ASSE Standard #1012-1978 and is capable of preventing back siphonage and backflow in water lines under continuous or intermittent pressure conditions. This device has two  $\frac{1}{2}$ " independent internal force-loaded check valves separated by an intermediate chamber with a means for automatically venting to the atmosphere. It is approved for low hazard use.

"Backflow Preventer, Double Detector Check Valve Backflow Preventer Assembly (DDC)": A double detector check valve assembly is a device covered by ASSE Standard #1048-1990, constructed of two  $\frac{1}{2}$ " independent check valves internally force-loaded with two  $\frac{1}{2}$ " tightly closing valves located at each end of the device and four  $\frac{1}{4}$ " test cocks for testing the check valves. In addition, the device has a by-pass line with a water meter and two  $\frac{1}{2}$ " independent check valves located within that line. The device is for low hazard conditions.

"Backflow Preventer, Dual Check Valve Backflow Preventer Assembly (DuC)": A dual check valve backflow preventer assembly is a device covered by ASSE Standard #1024-1990, constructed to operate under intermittent or continuous pressure conditions, consisting of two  $\frac{1}{2}$ " independent internal force-loaded check valves and is for low hazard conditions. The device must be located between two  $\frac{1}{2}$ " tightly closing valves. The check valves are removable for testing.

"Backflow Preventer, Reduced Pressure Principle Backflow Preventer Assembly (RPZ)": A reduced pressure principle backflow preventer assembly is a device covered by ASSE Standard #1013-1988 consisting of two  $\frac{1}{2}$ " internal force-loaded check valves separated by an intermediate chamber for automatic venting/discharging to the atmosphere. The first check valve reduces the supply pressure a predetermined amount so that during normal flow, and at cessation of normal flow, the pressure between the two  $\frac{1}{2}$ " check valves will be lower than the supply pressure. If either check valve leaks, the relief valve will discharge to atmosphere and maintain the pressure in the zone between the two  $\frac{1}{2}$ " check valves lower than the supply pressure. This device has two  $\frac{1}{2}$ " shut-off valves located at each end of the device and four  $\frac{1}{4}$ " test cocks for testing the check valves.

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This device is for high hazard conditions and is approved for continuous use.

"Ball Cock": A device consisting of a float valve equipped with a flow-splitter to provide a tank and trap refill; used in conjunction with a flush tank on a water closet.

"Battery of Fixtures": A battery of fixtures is any group of two (2) or more similar adjacent fixtures which discharge into a common horizontal waste or soil branch. (See Appendix B: Illustration C.)

"Boiler Blow-Down": Boiler blow-down is a controlled outlet on a boiler to permit emptying or discharging of sediment.

"Branch": A branch is any part of the piping system other than a main, riser, or stack. (See Appendix B: Illustration D.)

"Branch Interval": A branch interval is a length of soil or waste stack corresponding in general to a story height, but in no case less than eight--( 8) feet, within which the horizontal branches from one floor or story of a building are connected to the stack.

"Branch Vent": A branch vent is a horizontal vent connecting one or more individual vents with a vent stack or stack vent. (See Appendix B: Illustration E.)

"Building Classification": Building classification refers to the Department's designation of buildings into differing types based upon use or occupancy, e.g., residential buildings, dormitories, office buildings, restaurants, etc.

"Building Drain": The building (house) drain is that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building (house) sewer. The building drain terminates five--( 5) feet outside the building foundation wall. (See Appendix B: Illustration F.)

"Building Sewer": The building (house) sewer is that part of the horizontal piping of a drainage system which extends from the end of the building drain, receives the discharge of the building drain and conveys it to a public sanitary sewer or private sewage disposal system. The building sewer commences five--( 5) feet outside the building foundation wall. (See Appendix B: Illustration F.)

"Building Storm Drain": A building storm drain is the lowest horizontal portion of the storm drainage system used for conveying rain water, surface water, ground water, subsurface water, site

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drainage, condensate or cooling water inside the walls of a building to a point five--( 5) feet beyond the outside of the building foundation wall.

"Building Sub-drain": A building sub-drain is that portion of a sanitary drainage system (see definition of "Drainage System") which cannot drain by gravity into the building drain. (See Appendix B: Illustration G.)

"Building Trap": A building (house) trap is a device, fitting or assembly of fittings installed in a building drain to prevent circulation of air between the drainage system of the building and the building sewer.

"Chemical Waste System": Piping which conveys corrosive or toxic chemical waste to the drainage system.

"Circuit Vent": A circuit vent is a branch vent that serves two (2) or more traps and extends from the front of the last fixture connection of a horizontal waste branch to the vent stack. This type of venting applies only to floor drains and floor outlet fixtures which depend on siphonage for proper operation. (See Appendix B: Illustration H.)

"Clear Water" or "Clear Water Waste": Cooling water and condensate waste from refrigeration or air conditioning equipment, cooled condensate from steam heating systems and seepage water.

"Closed Water System": If a backflow preventer device is installed in a water distribution system, that portion of the system on the outlet side of the device is considered a closed water system. A check valve or backflow preventer (e.g., a reduced pressure principle backflow preventer assembly) may be used to create a closed water system.

"Code": The term "code" is commonly used to mean State or local statutes, ordinances, rules or regulations, e.g., requirements for plumbing methods, materials, etc. This Part 890, the Illinois Plumbing Code, will be referenced in this rule as "Part". In order for a State plumbing code to be enforceable, it must be authorized by the Illinois statute and be promulgated pursuant to such statute. At the local level, a county, city, township, village, sanitary/water district must adopt a plumbing ordinance or resolution and a plumbing code, and such ordinance or resolution and code must be filed with the clerk's office. A standard for plumbing contained in any local code that has not been officially adopted can only be construed as a recommended standard.

"Cold Water": Cold water is water below 85°F.

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"Combination Fixture": A combination fixture is a fixture combining two or more compartments or receptors.

"Combination Waste and Vent System": A combination waste and vent system is a system of waste piping with the horizontal wet venting of one or more floor drains by means of a common waste and vent pipe adequately sized to provide free movement of air above the flow line of the drain.

"Combined Building Sewer": A combined building sewer is one which receives storm water and sewage.

"Common Vent": A common vent is a vent connecting at the junction of two fixture drains and serving as a vent for both fixtures. (See Appendix B: Illustration I.)

"Connection": A connection is the joining of two pieces of pipe, or pipes and fittings, valves or other appurtenances.

"Contaminant" means any solid, liquid, or gaseous matter which, when present in a potable water supply distribution system, may cause the water to degrade so that water quality standards are not met or physical illness or injury to persons consuming the water could result.

"Contaminated Water": Contaminated water is water not suitable for human use in accordance with the inorganic, turbidity, organic and microbiological requirements of Sections 900.50, 900.65 and 900.70 of the Drinking Water Systems Code (77 Ill. Adm. Code 900).

"Continuous Vent": A continuous vent is a vertical vent that is a continuation of the drain to which it connects. The drain may be either vertical or horizontal. A continuous vent is also known as a back vent or an individual vent. (See Appendix B: Illustration J.)

"Continuous Waste": A continuous waste is a drain or waste line from two {2} or more fixtures or sink compartments (of a single fixture), such as a combined three-compartment sink, connected to a single common trap.

"Critical Level": The mark on an atmospheric vacuum breaker established by the manufacturer and stamped "CL-". This determines the minimum elevation above the flood-level rim or top of the fixture, whichever shall apply, at which the device shall be installed. When an atmospheric vacuum breaker does not bear a critical level marking, the bottom of the vacuum breaker shall constitute the critical level.

"Cross Connection": A cross connection is any physical connection or

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arrangement between two otherwise separate piping systems, one of which contains potable water and the other fluids of any kind, whereby water or other fluids may flow from one system to the other, the direction of flow depending on the pressure differential between the two piping systems.

"Cross-Connection Control by Containment": The installation of a backflow preventer at the service-connection to a premises to protect the water main.

"Cross-Connection Control by Isolation": The installation of a backflow preventer at each cross-connection in a premises to protect both the premises and water main.

"Cross-Connection Control (CCC)": An activity designed to prevent, discover, and eliminate all cross-connections.

"Cross-Connection Control Device": A cross-connection control device is a safety device installed in a potable water line to prevent potable water and fluids of any kind from being mixed. Cross-connection control devices include, but are not limited to: atmospheric vacuum breaker, double check valve backflow preventer, double detector check valve backflow preventer, dual check valve backflow preventer, and reduced pressure principle backflow preventer.

"Cross-Connection Control Device Inspector": A plumber who holds an Illinois Plumbing License and who has been certified by the Illinois Environmental Protection Agency in accordance with 35 Ill. Adm. Code 653.802 to inspect, test, maintain and repair cross-connection control devices. Such certification attests to an inspector's understanding of the principles of backflow and back siphonage, and the public health hazard presented by the improper installation of cross-connection control devices.

"Cross-Connection, Nonpressure Type": A submerged inlet installation where a potable water pipe is connected or extended below the overflow rim of a receptacle, or environment that contains a non-potable fluid at atmospheric pressure.

"Cross-Connection, Pressure Type": An installation where a potable water pipe is connected to a closed vessel or piping system that contains non-potable fluid, above atmospheric pressure.

"Dead End": A dead end is a pipe which is terminated at a developed distance of two-t 2} feet or more by means of a plug or other closed fitting, except piping serving as a cleanout extension to an accessible area. (See Appendix B: Illustration K.)



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"Developed Length": The developed length of a pipe is its length measured along the center line of the pipe, including fittings.

"Diameter": The length of a straight line passing through the center of an object, e.g., a circle. (For the diameter of a pipe, see "Pipe Diameter.")

"Drain": A drain is any pipe which carries waste water in a building drainage system. (See Appendix B: Illustration L.)

"Drain Laying": Drain laying encompasses the laying and connecting of piping from five- to five feet outside the foundation wall of a building to the public sanitary sewer system in the street or alley.

"Drainage Fixture Unit (D.F.U.)": See "Fixture Unit, Drainage."

"Drainage Piping": See "Drainage System."

"Drainage System": A drainage system includes all piping within public or private premises which conveys sewage, rain, or other liquid wastes to a point of disposal, but does not include the mains of a public sewer system or a private or public sewage treatment or disposal plant. The drainage system does not include the venting system. Drainage and venting are separate systems, although both are part of the overall plumbing system.

"Durham System": A Durham system is a soil or waste system where all piping is of threaded pipe, using recessed drainage fittings.

"Effective Opening": The effective opening is the minimum cross-sectional area at the point of water supply discharge, measured or expressed in terms of the diameter of a circle or, if the opening is not circular, the diameter of a circle of equivalent cross-sectional area. (This is applicable to sizing an air gap.)

"Existing Plumbing" or "Existing Work": Existing plumbing or existing work means a plumbing system or any part thereof which has been installed prior to the effective date of this Part.

"Extracted Mechanical Joint": A joint which is developed with a special drilling tool used to penetrate a copper pipe wall, after which two steel pins are extended from the drill. While rotating, the drill head is withdrawn from the pipe under power, raising an external collar from the hole in the pipe. The branch pipe is then brazed into the collared outlet.

"Fixed": Stationary, immovable or immobile, as in a fixed air gap.

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"Fixture Branch": A fixture branch is a water supply, soil or waste pipe serving one or more fixtures.

"Fixture Carrier": A fixture carrier is a device designed to support an off-the-floor plumbing fixture.

"Fixture Drain": A fixture drain is the vertical or horizontal outlet pipe from the trap of the fixture to the junction of that pipe with any other drain pipe. (See Appendix B: Illustration M.)

"Fixture Supply": A water supply pipe connecting the fixture to a branch or main water supply pipe.

"Fixture Unit, Drainage" or "Drainage Fixture Unit (D.F.U.)": A fixture unit, drainage is the mathematical factor used by the plumbing industry to estimate the probable load on the drainage system caused by discharge from various plumbing fixtures. One fixture unit, drainage is equivalent to seven-and-one-half- to 7.5 gallons per minute or one and one-half cubic foot per minute.

"Fixture Unit, Water Supply" or "Water Supply Fixture Unit (W.S.F.U.)": Fixture unit, water supply is the mathematical factor used by the plumbing industry to estimate the probable demand on the water supply system (considering the volume, duration of flow, and intervals between operations) caused by various plumbing fixtures.

"Float Valve": A float valve is an automatic opening valve, operated by a float, used to control the water level in a vessel, tank, or other container.

"Flood Level": The flood level of a fixture or receptacle is the elevation at which an impounded liquid will overflow the fixture or receptacle.

"Flood Level Rim": The top edge of a receptacle or fixture over which an impounded liquid will flow when the receptacle or fixture is filled beyond its capacity (or flooded). "Overflow rim" is used interchangeably with flood level rim.

"Flooded": A fixture is flooded when the liquid therein equals the maximum capacity of the fixture or when the level of the liquid therein rises to the fixture's flood level rim. Any attempt to add additional liquid to a flooded fixture causes liquid to overflow.

"Flush Valve": A flush valve is a device for the purpose of flushing water closets and other similar fixtures. (See Appendix B: Illustration N.)

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"Flushometer Valve": A flushometer valve is a device actuated by hand, a photoelectric cell, or other electronic control which discharges a predetermined quantity of water to fixtures for flushing purposes. The valve is closed by direct water pressure.

"Grade": Grade is the fall, pitch, or slope of a line of pipe in reference to a horizontal plane. In drainage, it is usually expressed as the fraction of an inch fall per foot length of pipe. This may also be expressed as a percentage. (See Appendix B: Illustration O.)

"Grease Interceptor": A device used to separate and retain grease, oils and other floating matter from sewage waste while permitting the remaining flow to discharge into the drainage system. See "Interceptor."

"Grey Water": Waste water, such as dishwater, or other waste water not containing fecal matter or urine.

"Group of Fixtures": A group of fixtures means two or more fixtures adjacent to or near each other.

"Hangers": Devices for supporting and securing pipe, fixtures, and equipment to walls, ceilings, floors, or any other structural member.

"High Toxicity": A substance with an oral LD<sub>50</sub> (lethal dose for 50 percent of the population) of 500 milligrams per kilogram or less is considered highly toxic. An average adult would have to ingest less than an ounce of the substance to experience severe illness or death. Cyanide is an example of a highly toxic substance.

"Horizontal Branch": A horizontal branch is a drain pipe extending laterally from a soil or waste stack or building drain, with or without vertical sections or branches, which receives the discharge from one or more fixture drains and conducts the discharge to the soil or waste stack or to the building drain. (See Appendix B: Illustration P.)

"Horizontal Pipe": Horizontal pipe means any pipe or fitting which makes an angle of less than 45 degrees with the horizontal.

"Hose": A flexible tube for conveying fluids (as from a faucet or hydrant).

"Hose Bibb": A faucet to which a hose may be attached.

"Hot Water": Hot water is water at a temperature of not less than 120°F.

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"House Drain": See "Building Drain."

"House Trap": See "Building Trap."

"Hydrant": A valve or faucet for drawing water from a buried pipe which generally includes a stand pipe with a valve or faucet at the upper end. It usually has a threaded valve outlet to which a hose may be attached.

"Indirect Waste": An indirect waste is a pipe that does not connect directly with the drainage system but conveys liquid waste by discharging through an air gap into the drainage system.

"Individual Vent": An individual vent is a pipe installed to vent a fixture trap which connects with the vent system above the fixture served, or which terminates in the outside atmosphere.

"Individual Water Supply (Private Water Supply)": A water supply system serving a single family dwelling.

"Industrial Wastes": Industrial wastes are liquid wastes resulting from the processes employed in industrial and commercial establishments.

"Insanitary": Contaminated. Not hygienic, or unclean enough to endanger health.

"Interceptor": An interceptor is a device designed and installed to separate and retain hazardous or undesirable matter from normal waste and permit normal sewage or liquid waste to discharge into the drainage system. Interceptors may be designed to remove gas, oil, sand, grit and grease. "Separator" is also commonly used to mean an "interceptor."

"Invert": The invert is the lowest part of the internal cross-section of a pipe or conduit.

"Island Fixture Vent": A vent in which the vent pipe rises as near as possible to or above the highest water level in the fixture vented and then turns down before connecting to the stack or main vent. (See Section 890.1600, "Special Venting for Island Fixtures".)

"Joint": A joint is the juncture of two pipes, a pipe and a fitting, or two fittings.

"Lead Free": When used with respect to solder and flux, lead free refers to solders and flux containing not more than two-tenths-of-one percent (0.2%) lead; and when used with respect to pipe and pipe

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fittings, lead free refers to pipes and fittings containing no more than ~~eight percent~~ 8.0% lead.

"Length of Pipe": Length of pipe is the overall distance measured along the center line of a pipe. See "Developed Length."

"Liquid Waste": Liquid waste is the discharge from any fixture, appliance, or appurtenance, in connection with a plumbing system which does not receive fecal matter.

"Load Factor": The load factor is the percentage of the total connected fixture unit flow rate which is likely to occur at any point in the drainage system. The load factor varies with the type of occupancy, the total flow above the point being considered, and probability of simultaneous use. Load factor represents the ratio of the probable load to the potential load.

"Local Ventilating Pipe": A local ventilating pipe is a pipe on the fixture side of the trap through which vapors or gases or foul air are removed from a room or fixture to the outside atmosphere. Certain special apparatus, such as sterilizers, are sometimes provided with a local ventilating pipe in order to remove vapors. A local ventilating pipe is not connected into the vent piping of the drainage system.

"Loop Vent": A circuit vent which loops back to connect with a stack vent instead of a vent stack. Its use is limited to floor drains and floor outlet fixtures which depend on self siphonage for proper operation.

"Low Toxicity": A substance with an oral LD[50] (lethal dose for 50 percent of the population) greater than 5,000 milligrams per kilogram is considered practically nontoxic. An average adult would have to ingest more than a pint of the substance to experience severe illness or death. Hydrogen peroxide is an example of a substance of low toxicity.

"Main": The main of any piping system is the principal artery of the system to which branches may be connected.

"Main Vent": The main vent is the principal artery of the venting system to which vent branches may be connected. (See Appendix B: Illustration Q.)

"Maximum Demand": In plumbing, the greatest requirement of flow of either water supply or waste discharge from the fixtures of a building, or any specific segment thereof.

"Manhole": A manhole is an opening constructed to permit a person to

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gain access to an enclosed space. In a sewer or any portion of the plumbing system, it is used to eliminate restriction of flow at changes of direction or junctions and to facilitate cleaning.

"Minor Repairs": Minor repairs do not require changes in the piping to or from plumbing fixtures or involve the removal, replacement, installation or reinstallation of any pipe or plumbing fixture.

"Moderate Toxicity": A substance with an oral LD[50] (lethal dose for 50 percent of the population) of 500 to 5,000 milligrams per kilogram is considered moderately toxic. An average adult would have to ingest between an ounce (2 tablespoons) and a pint of the substance to experience severe illness or death. Chloroform is an example of a moderately toxic substance.

"New Plumbing" or "New Work": For purposes of this Part, new plumbing or new work means any plumbing system or part thereof, or any addition to or alteration of an existing system, being installed or recently completed.

"Non-Potable Water": Non-potable water is water that does not meet public health standards for drinking water (refer Refer to 77 Ill. Adm. Code 900) and is not suitable for human consumption or culinary use. Any water of unknown quality is considered non-potable.

"Non-Toxic Transfer Fluids": Fluids having no normal detrimental effect on humans.

"Occupancy": Occupancy generally means the use for which a building currently serves. In the case of a single family residence, occupancy shall mean taking possession of and living in the premises as one's sole and exclusive residence for a period of not less than six(6) months after the completion of construction, or issuance of a Certificate of Occupancy by a unit of local government.

"Offset": An offset in a line of piping is a combination of elbows or bends which brings one section of pipe into a line parallel with the other section.

"Open Plumbing": Installation of plumbing so that traps and drainage pipes and their surroundings beneath fixtures are ventilated, accessible, and open to inspection. Open plumbing is also referred to as an exposed plumbing installation.

"Open Water System": A water system with no check valve or backflow preventer installed in the service pipe.

"Overflow Rim": The top edge of a receptacle or fixture over which an



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impounded liquid will flow when the receptacle or fixture is filled beyond its capacity (or flooded). "Flood level rim" is used interchangeably with overflow rim.

"P.S.I.": "P.S.I.": or "psi": Pounds per square inch of pressure.

"Part": Part means the Illinois Plumbing Code in its entirety, Part 890 (referenced as 77 Ill. Adm. Code 890), subsequent amendments thereto, or any emergency rule which the Department lawfully adopts.

"Peppermint Oil": A pungent, aromatic mint oil sometimes used in testing a drain, waste and vent system by means of a "Peppermint Test."

"Peppermint Test": A test for leakage using peppermint oil and hot water as the media, and the sense of smell to determine any leak; also known as a "scent test" (see Section 890.1930(e)).

"Pet Cock": A pet cock is a small faucet or valve used to drain water, steam, or air.

"pH": An expression of acidity and alkalinity on a scale from zero (0) to 14, with seven-7 being neutral. Numbers less than seven-7.0 indicate increasing acidity as the number decreases, and numbers greater than seven-7.0 indicate increasing alkalinity as the number increases.

"Pipe": A cylindrical conduit or conductor, the wall thickness of which is sufficient to receive a standard pipe thread.

"Pipe Diameter": Generally the distance measured from the inside wall of a pipe (passing through the center of the pipe) to the opposite inside wall. Any referenced pipe diameter or pipe size shall mean the nominal size or diameter as designated by the commercial manufacturer.

"Pipefitting": The installation of piping other than that piping which is defined as plumbing.

"Pipe Increments": For increasing or decreasing pipe size by a given number of pipe increments - the following examples constitute one pipe size change: 1, 1 1/2, 2, 2 1/2, 3, 3 1/2, 4, 4 1/2, 5.

"Piping": Piping is an assembly of pipes or conduit with fittings of compatible design. This term is commonly interchanged with "Pipe."

"Pitch": "Pitch" is synonymous with "grade." See "Grade."

"Plumbing": See Section 2 of the Illinois Plumbing License Law (111

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Rev-Stat--19917-ch--111-i/27-par--1102 [225 ILCS 320/2].

"Plumbing Appliance": A plumbing appliance is a special class of plumbing fixture intended to perform a special function. This term includes water heaters, water coolers, drinking fountains, heat exchanger and water treatment equipment other than water softeners.

"Plumbing Appliance": An accessory or device used in a plumbing system which demands no additional water supply, nor adds any discharge load to a fixture or the drainage system. Plumbing appliances shall include instruments, gauges, relief valves, limit switches, solenoid valves, etc.

"Plumbing Fixture": Plumbing fixtures are (approved) installed receptacles, devices or appliances which are supplied with water or which receive or discharge liquid or liquid-borne waste, with or without discharge of such waste into the drainage system to which they may be directly or indirectly connected. Generally an installed appliance to the potable water supply system which makes available intended potable water, or a receptor which receives and discharges liquids or liquid-borne waste either directly or indirectly into the drainage system. A permanent appendage usually designed as a receptacle and intended to receive and/or discharge liquid or liquid-borne waste to a drainage system. Industrial or commercial tanks, vats, and similar processing equipment are not plumbing fixtures, but they may be connected to, or discharged into, approved traps or plumbing fixtures.

"Plumbing Inspector": An employee or agent of State or local government who holds a valid Illinois Plumbing License and is authorized to inspect plumbing.

"Plumbing System": See Section 2 of the Illinois Plumbing License Law (111-Rev-Stat--19917-ch--111-i/27-par--1102 [225 ILCS 320/2].

"Pop-Up Waste": A pop-up waste consists of a waste outlet into which a sliding metal or plastic stopper is fitted, and the stopper can be raised to drain the waste. A common pop-up waste used for lavatories has a lever which passes out the side of the drain fitting and connects to a lift rod that extends on top of the lavatory or sink. The rod is lifted to lower the stopper, or depressed to raise the stopper and drain the lavatory.

"Potable Water": Potable water is water that is suitable for human consumption in accordance with the Drinking Water Systems Code (77 Ill. Adm. Code 900).

"Pressure Gradient Monitor": A device used to protect the quality of

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water, fail safe by design, securing the potable water system by isolating a heat exchanger when the pressure between the potable water and the heat exchange medium drops below a preset level.

"Pressure Relief Valve": See "Relief Valves."

"Private" or "Private Use": In the classification of plumbing fixtures, private applies to fixtures in residences, apartments, and private bathrooms of hotels or motels where the fixtures are intended for the use of a single family or an individual, handwashing stations (lavatories) within designated resident staff or common restrooms in hospitals/long-term care units/mental health facilities, and hand washing stations where food is being prepared.

"Private Sewage Disposal System": This means any sewage handling or treatment facility receiving domestic sewage from fewer than fifteen (15) people or population equivalent and having a ground surface discharge or any sewage handling or treatment facility receiving domestic sewage and having no ground surface discharge. Refer to Section 3 of the Private Sewage Disposal Licensing Act (415 ILCS 225/3) and Private Sewage Disposal Licensing Code (77 Ill. Adm. Code 905).

"Private Sewer": A private sewer is a sewer privately owned and not directly controlled by a public authority.

"Private Water Supply" or "Private Water System": Any potable water supply which provides water for drinking, culinary, and sanitary purposes and serves an owner-occupied single family dwelling.

"Proper" or "properly" means to be accurate or meeting the standard of competence for the given situation and properties of the materials involved based upon the standards in this Part and manufacturer's recommendations.

"Public" or "Public Use": For purposes of classifying plumbing fixtures, "public" refers to any installation or use of plumbing fixtures or facilities except those in residences, apartments or private bathrooms of hotels/motels where the fixtures are intended for the personal use of an individual or single family only.

"Public Sanitary Sewer": A public sanitary sewer is controlled by a public authority and is intended to receive and transport sewage.

"Public Water System": A public water system is a system for the provision to the public of piped water for human consumption, if the system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days per year.

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The term public water system includes: any collection, treatment, storage, and distribution facility under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. The public water system ends at and with the water service connection.

"Quarter Bend": A quarter bend is a fitting changing direction of 90 degrees. (See Appendix B: Illustration R.)

"Quick Closing Valve": A valve or faucet that closes automatically when released or one that has fast action closing.

"Readily Accessible": Readily accessible means direct access without the necessity of removing or moving any panel, door or similar obstruction.

"Receptor": Devices or fixtures which receive the discharge from indirect waste pipes.

"Reduced Pressure Zone Principle Backflow Preventer Assembly (RPZ)": See "Backflow Preventer, Reduced Pressure Principle Backflow Preventer Assembly (RPZ)."

## "Relief Valves":

Temperature relief valve - A valve designed to release water to the atmosphere at a predetermined temperature setting.

Pressure relief valve - A valve designed to relieve excessive pressure to the atmosphere at a predetermined setting.

Temperature and pressure relief valve or pressure-temperature relief valve - a valve incorporating a temperature relief valve and a pressure relief valve in one unit.

Vacuum relief valve - A valve which admits air to the system when the system is attempting to reduce its pressure to less than atmospheric.

"Relief Vent": A vent which permits circulation of air in or between drainage and vent systems. (See Appendix B: Illustration S.)

"Restaurant": Any establishment selling, to the public, food or liquid beverages that can be consumed on the premises.

"Restroom": For the purpose of this Part, a restroom, as a minimum, will consist of one water closet and one lavatory all located in the

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same room.

"Return Offset": A double offset installed so as to return the pipe to its original alignment. (See Appendix B: Illustration T.)

"Revent Pipe": See "Individual Vent". (See Appendix B: Illustration U.)

"Rim": An unobstructed open edge of a fixture.

"Riser": A water supply pipe which extends vertically one full story or more to convey water to branches or to a group of fixtures.

"Roughing-In": The installation of all parts of the plumbing system which can be completed prior to the installation of fixtures. This includes drainage, water supply, and vent piping, and the necessary fixture supports.

"Safe Pan": A safe pan is installed beneath piping and/or a fixture to collect and drain any leakage. Safe pans are especially important in food preparation/storage areas and sterile areas of health care facilities that have overhead, exposed, drainage piping.

"Safe Waste": See "Indirect Waste."

"Sanitary Sewer": A sanitary sewer is a public or private sewer into which building sewers are connected.

"Sanitary Waste": Sanitary waste is sewage containing human excrement and liquid household wastes or ordinary wastes derived from a plumbing system.

"Semi-Private Water System": means a water supply which is not a public water system, yet which serves a segment of the public other than an owner-occupied single family dwelling. (See the Illinois Groundwater Protection Act: ~~411-1-Rev-Stat-1991~~-ch-~~111-1-27~~-par-7459) [415 ILCS 559].

"Separator": See "Interceptor."

"Service Connection": A service connection is the tap at the water main and any pipe to the property line.

"Sewage": Sewage is any waste containing animal, human, or vegetable matter in suspension or solution, and may include liquids containing chemicals in solution.

"Sewage Ejector": A device for lifting sewage by pumping means.

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"Side Vent": A vent connecting to the drain pipe through a fitting at an angle not greater than 45 degrees to the vertical.

"Sillcock": A type of lawn faucet. A faucet used on the outside of a building to which a garden hose may be attached.

"Size of Pipe or Tubing": Pipe is generally sized according to the approximate dimension of its bore or inside diameter, whereas tubing is usually sized by measuring its outside diameter. Both are expressed in inches and fractions thereof. For purposes of this Part, any referenced pipe or tubing size shall mean the nominal size or diameter as designated by the commercial manufacturer.

"Slope": "Slope" is synonymous with "grade." See "Grade."

"Soil Pipe": A soil pipe is any pipe which conveys the discharge of water closets or fixtures having similar functions, with or without the discharge from other fixtures, to the building drain.

"Special Waste Pipe": Piping which conveys special waste. Piping that has been designed and manufactured of special material to handle special waste such as acids.

"Special Wastes": Wastes which require special handling and treatment before they may be discharged into the plumbing system. [See Subpart H.]

"Sprinkler System": There are two basic types of sprinkler systems. A fire sprinkler system is a system of piping and necessary appurtenances for conveying water or other extinguishing fluid to outlets for the purpose of fire extinguishment. A lawn sprinkler system is a system of piping installed for irrigation purposes.

"Stack": A general term for any vertical line of soil, waste, or vent piping.

"Stack Vent": The extension of a soil or waste stack above the highest horizontal drain connected to the stack. (See Appendix B: Illustration V.)

"Stack Venting": A method of venting a fixture or fixtures through the soil or waste stack.

"Sterilizer, Boiling Type": A boiling type "sterilizer" is a fixture (non-pressure type) used for boiling instruments, utensils, and/or other equipment (used for sterilization). Some devices are portable, others are connected to the plumbing system.



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"Sterilizer, Instruments": A device for the sterilization of various instruments.

"Sterilizer, Pressure (Autoclave)": A fixture (pressure vessel) designed to use steam under pressure for sterilizing.

"Sterilizer, Pressure Instrument Washer-Sterilizer": A pressure instrument washer-sterilizer is a fixture (pressure vessel) designed to both wash and sterilize instruments during the operating cycle of the fixture.

"Sterilizer Vent": A separate pipe or stack, which is trapped below the lowest exhaust and indirectly connected to the building drainage systems, which receives the vapors from non-pressure sterilizers, or the exhaust vapors from pressure sterilizers, and conducts the vapors directly to the outside atmosphere. Sometimes called a vapor, steam, atmospheric, or exhaust vent.

"Sterilizer, Water": A water sterilizer is a device for sterilizing water and storing sterile water.

"Storm Sewer": A sewer which is used for conveying rain water, surface water, ground water, subsurface water, site drainage, condensate, cooling water or other similar liquid waste (excluding sewage) from the building storm drain to an approved point of discharge.

"Sub-soil Drain": A drain which collects sub-soil drainage and conveys it to a place of disposal.

"Sub-soil Drainage": Sub-soil drainage is liquid waste such as run off water, seepage water or clear water waste, free of fecal matter and grey water.

"Sump": A sump is a receptacle which receives sanitary or storm waste, located below the normal grade level of the gravity system, and emptied by pumping or gravity.

"Sump Pump": A pump for the removal of storm, subsoil and clear water waste drainage from a sump.

"Supports." A support is a hanger, anchor or other device for securing or holding pipe fixtures to walls, ceilings, floors, or structural members.

"Swimming Pool": Refer to the Swimming Pool and Bathing Beach Act ~~{111-Rev-Stat-1997-ch-111-1/2-par-1204-et-seq-}~~ [210 ILCS 125] for minimum sanitary requirements for the design and operation of

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swimming pools and bathing beaches.

"Tempered Water": Tempered water is water ranging in temperature from 85°F to, but not including, 120°F.

"Terminal Heating Device": A device located within the environment to be conditioned which directly transfers its heating energy by radiation or forced or gravity convection.

"Test Cock": A test cock is a small cock, faucet, or valve set in a water pipe, pump, backflow device or water jacket used to drain water or test pressure.

"Toxic": Not fit for human consumption. Poisonous.

"Toxic Transfer Fluids": Sanitary waste, grey water or mixtures containing harmful substances, including but not limited to ethylene glycol, hydrocarbons, oils, ammonia refrigerants, and hydrazine.

"Trap": A trap is a fitting or device so designed and constructed as to provide, when properly vented, a liquid seal which will prevent the back passage of air without materially affecting the flow of sewage or waste water through it. (See Appendix B: Illustration W.)

"Trap Arm": A trap arm is that portion of a fixture drain between a trap and its vent.

"Trap Primer": A trap primer is a device or system of piping to maintain a water seal in a trap.

"Trap Seal": The vertical distance between the crown weir and the top of the dip of the trap. (See Appendix B: Illustration W.)

"Tube": A cylindrical conduit or conductor, the wall thickness of which is less than that needed to receive a standard pipe thread. Compare with "Pipe."

"Tuberculation": A condition which develops on the interior of pipe due to corrosion resulting in the creation of small, hemispherical lumps (tubercules) on the inner walls of the pipe.

"Union": A union is a coupling device used to join two pipes end-to-end, but allow them to be disconnected and re-connected. This joint can be assembled and disassembled without removing any adjacent pipes.

"Vacuum": A pressure less than atmospheric pressure, sometimes referred to as suction. It is usually measured in inches of mercury

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below atmospheric pressure, such as ten-~~4~~ 10<sup>+</sup> or 20 twenty inches of mercury. To vacuum also means to siphon.

"Vacuum Breaker": A device which prevents the creation of a vacuum by admitting air at atmospheric pressure, used to prevent back siphonage.

"Vacuum Breaker, Hose Type (HVB)": A back siphonage prevention device designed for hose connections which are not under continuous pressure, and meeting the requirements of ANSI/ASSE 1011-1982.

"Vacuum Breaker, Non-Pressure Type (Atmospheric)": A vacuum breaker which is not designed to be subject to static line pressure, and meeting the requirements of ANSI/ASSE 1001-1990.

"Vacuum Breaker, Pressure Type": A vacuum breaker designed to operate under conditions of static line pressure, and meeting the requirements of ASSE 1020-1989.

"Vacuum Relief Valve": A device to prevent excessive vacuum in a pressure vessel.

"Vent, Main": See "Main Vent."

"Vent Pipe." A pipe in a plumbing system that is used to equalize pressure and ventilate the plumbing system. Also see the definition of "Vent System."

"Vent Stack": A vent stack is a vertical vent pipe installed primarily for the purpose of providing circulation of air to and from any part of the drainage system and terminating to the atmosphere or in the stack vent. (See Appendix B: Illustration X.)

"Vent System": The pipe or pipes installed to provide a flow of air to or from a drainage system and to provide a circulation of air within the system to protect trap seals from siphonage and back pressure.

"Venturi": A short section in a pipe with a reduced diameter or cross sectional area (forming a throat) compared to the larger ends, thereby increasing the velocity of the fluid passing through the throat and decreasing the pressure at the throat. This decrease in pressure allows another fluid to be drawn into the venturi.

"Vertical Pipe": Any pipe or fitting which makes an angle of 45 degrees or less with the vertical.

"Wall Hung Water Closet": A water closet installed in such a way that no part of the water closet touches the floor.

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"Waste": See "Sanitary Waste."

"Waste Pipe": A pipe which conveys only waste material.

"Water Distribution Pipe": A pipe within the building or on the premises which conveys water from the water service to the point of usage.

"Water Hammer": A concussion or sound of concussion of moving water against the sides of a containing pipe or vessel due to a sudden stoppage of flow. A pressure that results from a sudden deceleration of flow of water in a closed conduit. It is also called hydraulic shock.

"Water Hammer Arrestor": A device to absorb hydraulic shock.

"Water Heater": An appliance for supplying hot water for domestic or commercial purposes. It may be used for space heating if the water temperature does not exceed 150° degrees F.

"Water Main": A water supply pipe for public or community use.

"Water Outlet": An opening through which water is supplied to a fixture, device, appliance or an appurtenance or into the atmosphere.

"Water Riser Pipe": See "Riser."

"Water Service" or "Water Service Pipe": A water service is the pipe from the water main or source of potable water supply to the water distribution pipe of the building served.

"Water Supply Fixture Unit (W.S.F.U.)": See "Fixture Unit, Water Supply."

"Water Supply Stub": A vertical pipe less than one story in height supplying one or more fixtures.

"Water Supply System": The water service pipe, the water distribution pipe, and all fittings, valves, and appurtenances in or associated with the building or premises being served.

"Wet Vent": A vent which also serves as a drain. A vent which receives the discharge of wastes other than from water closets. (See Appendix B: Illustration Y.)

"Yoke Vent": A pipe connecting upward from a soil or waste stack to a vent stack for the purpose of preventing pressure changes in the stack. (See Appendix B: Illustration Z.)

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(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART B: PLUMBING MATERIALS

Section 890.210 Materials

- a) With the exception of faucets, grease traps, and gas and oil interceptors, all materials, piping, fittings, appliances, appurtenances and devices used in all plumbing systems shall be listed in Appendix A: Table A and shall conform to standards for use as approved by one or more of the organizations listed in subsection (b) of this Section. All faucets, grease traps, and gas and oil interceptors used shall meet the requirements for such materials, appliances and appurtenances as provided in this Part.
- b) Reference for Agencies and Organizations. Abbreviations used in Appendix A, Table A, refer to the following agencies or organizations:
- 1) ANSI - American National Standards Institute; 1430 Broadway, New York City, New York 10018.
  - 2) ARI - Air Conditioning and Refrigeration Institute; 1501 Wilson Boulevard, Arlington, Virginia 22209.
  - 3) ASHRAE - American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc.; 1791 Tullie Circle, NE, Atlanta, Georgia 30329-2305.
  - 4) ASME - American Society of Mechanical Engineers; United Engineer Center, 345 East 47th Street, New York City, New York 10017.
  - 5) ASSE - American Society of Sanitary Engineering; P.O. Box 40362, Bay Village, Ohio 44140.
  - 6) ASTM - American Society for Testing and Materials; 1916 Race Street, Philadelphia, Pennsylvania 19103-1187.
  - 7) AWWA - American Water Works Association; 6666 West Quincy Avenue, Denver, Colorado 80235.
  - 8) CISPI - Cast Iron Pipe Institute; Suite 419, 5959 Shallowford Road, Chattanooga, Tennessee 37421.
  - 9) FM-Factory Mutual Standard; 1151 Boston-Providence Turnpike, P.O. Box 9102, Norwood, Massachusetts 02062.
  - 10) NSF - NSF International Midwestern Regional Office, 2311 Green Road, National Sanitation Foundation--Testing Laboratory--Inc., 3475-Plymouth-Road, P.O.-Box-1468, Ann Arbor, Michigan 48105-48166.
  - 11) PDI - Plumbing and Drainage Institute; 1106 W. 77th Street, South Drive, Indianapolis, Indiana 46260-3318.
  - 12) UL - Underwriter Laboratories, Inc.; 333 Pfingsten Road, Northbrook, Illinois 60062.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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Section 890.230 Safe Pan Material and Construction

- a) Material. Safe pans shall be made only of lead, copper, ABS, PVC or fiberglass material.
- 1) Lead sheets for safe pans shall weigh at least four- $\frac{1}{4}$  pounds per square foot.
  - 2) Copper sheets for safe pans shall weigh at least twelve- $\frac{1}{4}$  ounces per square foot.
  - 3) ABS or PVC safe pans or liners shall be 30 mil or 40 mil.
  - 4) Fiberglass for safe pans or liners shall be equally durable to the ABS and PVC material described in subsection (a)(3) of this Section.
  - 5) Galvanized safe pans shall be of at least 24 gauge material.
  - 6) Aluminum safe pans shall be of at least 24 gauge material.
  - 7) Stainless steel safe pans shall be of at least 24 gauge material.
- b) Construction. All safe pans shall be constructed with performed dam corners, shall be watertight, adequately reinforced and provided with a drain opening designed to make a watertight joint. ABS and PVC safe pans and liners shall be solvent welded together with the proper cement.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART D: TRAPS AND CLEANOUTS

Section 890.430 Cleanout Equivalent

Fixture Trap. A fixture trap, readily removable and without disturbing concealed plumbing or requiring fixture removal, is acceptable as a cleanout equivalent, if there is no more than one  $\frac{1}{4}$  90 degree bend on the line to be rodded. ~~A water-closet-is-not-considered-a-cleanout-equivalent.~~

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART E: INTERCEPTORS - SEPARATORS AND BACKWATER VALVES

Section 890.520 Gasoline, Oil and Flammable Liquids

Gas and Oil Interceptors. Commercial vehicle repair garages and gasoline stations with grease racks or pits, storage garages, enclosed parking garages, fire stations, emergency vehicle garages, and all facilities which generate oil and/or flammable waste shall be provided with floor drains or trench drains connected to an approved gas and oil interceptor. Residential garages with floor drains shall have a gas and oil interceptor if they have four  $\frac{1}{4}$  or more vehicle bays or exceed 900 square feet in size.

a) General Requirements



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- 1) Gas and oil interceptors shall be of cast iron, steel, polyethylene, polymer concrete or equally durable fiberglass materials suitable for gas and oil. Fiberglass interceptors shall not be used for receiving any substance other than gas and oil. Poured concrete interceptors are prohibited.
- 2) Each interceptor or basin shall be provided with a heavy metal cover which shall be bolted into place and made gas and water-tight.
- 3) Each interceptor and, if provided with separate compartments, each compartment and basin shall be provided with a vent of at least two- $\frac{1}{2}$  inches, which shall extend independently to the outer air. Two  $\frac{1}{2}$  or more vents may be connected to a header which shall be six- $\frac{1}{2}$  inches or higher than the lowest floor drain served.
- 4) The inlet of the interceptor or the first basin shall be trapped except when floor drains are individually trapped.
- 5) Floor drains above the level of the interceptor or basins shall connect to a separate stack vent.
- 6) Interceptors must be constructed in accordance with the Illinois State Fire Marshal's rules and regulations for underground storage tanks (41 Ill. Adm. Code 170), where applicable, and shall be maintained to prevent loss of gas, oil, etc. Interceptors utilizing an automatic draw off feature must install a separate U.L. approved underground storage tank or storage tank integral with the interceptor.
- 7) Minimum Dimension. Oil interceptors shall have a depth of at least two- $\frac{1}{2}$  feet below the invert of the discharge drain.
- 8) Performance. The oil interceptor shall have at least a 12 inch water seal with a minimum 90 percent efficiency rating or have a minimum of an 18 inch water seal. Gas and oil in the effluent from the interceptor or triple basin shall not exceed the levels specified by the sewage treatment authority having jurisdiction, as promulgated by local ordinances and regulations.
- 9) Trench drains shall be of cast iron, steel, plastic polymer material (a minimum of schedule 40) or equally durable fiberglass. Poured concrete trench drains for gas/oil discharges are prohibited.
- b) Commercial Requirements. For all commercial facilities specified in this Section, a minimum of one  $\frac{1}{2}$  floor drain per working stall or one  $\frac{1}{2}$  floor drain for each 500 square feet shall be installed. Where trench drains are used to carry wastes to the gas/oil interceptor, the trench drain shall either extend the entire length of the work (stall) area or shall be installed in each working stall. Continuous trench drains shall have a trapped and vented opening no less than every 40 lineal feet. Intermittent trench drains shall be treated as individual floor drains and shall meet the trap and venting requirements for floor drains. Floor drains for such areas shall be provided with an interceptor or a series of three  $\frac{1}{2}$  basins before

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discharging into the building drainage system.

- c) Sizing.

- 1) Motor Vehicle Servicing. Interceptors are required for motor vehicle servicing areas. The minimum size interceptor shall be six- $\frac{1}{2}$  cubic feet (45 gallons) for the first 100 square feet of garage floor area plus one  $\frac{1}{2}$  cubic foot for each additional 100 square feet to be drained into the interceptor. (One  $\frac{1}{2}$  cubic foot equals 7.5 seven-and-one-half- $\frac{1}{2}$ - $\frac{1}{2}$  gallons.)
- 2) The minimum size interceptor for all facilities, except those facilities required to conform to subsection (c)(1) of this Section, shall be six- $\frac{1}{2}$  cubic feet (45 gallons) for the first 500 square feet of floor area plus one  $\frac{1}{2}$  cubic foot per each additional 500 square feet to be drained into the interceptor.
- d) Catch Basins. In all motor vehicle wash racks, drainage shall discharge into a water-tight catch basin at least 36 inches in diameter, or three- $\frac{1}{2}$  feet by 2.5 two-and-one-half- $\frac{1}{2}$ - $\frac{1}{2}$  feet (rectangular shape). The bottom shall not be less than 27 inches below the invert of the outlet pipe. The outlet pipe shall be trapped with a catch basin trap and shall be of cast iron or schedule 40 plastic with a seal of at least six- $\frac{1}{2}$  inches and a cleanout of at least four- $\frac{1}{4}$  inches.
- e) Interceptor for Special Waste. Before installing any interceptor for any other flammable or special wastes, a drawing including all pertinent information shall be submitted to the Department for its approval.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART F: PLUMBING FIXTURES

## Section 890.630 Installation

- a) Cleaning. Plumbing fixtures shall be installed in a manner to afford easy access for cleaning.
- b) Securing Fixtures. Floor outlet fixtures shall be secured by screws or bolts.
- c) Wall-Hung Bowls. Wall-hung water closet and urinal bowls shall be rigidly supported by a concealed metal supporting member so that no strain is transmitted to the closet connection.
- d) Setting. Plumbing fixtures and traps shall be set level and in a true alignment.
- e) Water Supply Connection. Hot or tempered and cold water shall be supplied to all plumbing fixtures which need or are designed for hot or tempered and cold water. Hot-water-for-the-proper-use-and-function. All mixing faucets and single lever faucets shall have both hot and cold water connected to them with the hot water supply on the left side of the faucet. Further, no mixing faucet of standard

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manufacture shall be allowed that will permit internal modification for cross piping of hot and cold water connections. Each lavatory and sink faucet shall have supply pipes which are accessible.

- f) Improper Location. Piping, fixtures, or equipment shall not be located or installed in such a manner as to interfere with the normal operation of windows, doors, or other exit openings. Plumbing fixtures shall be installed in an area where there is sufficient room for the fixture to be used for its intended purpose.

- g) Surrounding Materials. Where water closets or urinals are installed for public use, the flooring under the fixture base extending to at least 18 inches from the front and both sides of the water closet or urinal, and extending from the back of the water closet or urinal to the wall, shall be of non-absorbent material.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

**Section 890.640 Prohibited Fixtures**

- a) Drinking fountains shall not be installed in public toilet rooms.  
 b) Fixed wooden, concrete, cement or tile wash trays or sinks shall not be installed in any restaurant or commercial food establishment.  
 c) Bathtub liners/inserts that are manufactured to an exact fit over existing bathtubs or custom fabricated according to the dimensions of an existing bathtub may be installed provided they have a slip resistant floor (bottom) surface and are manufactured/fabricated from high impact plexiglass/ABS or acrylic/plastic material complying with ANSI Z124.8-1990 or from porcelain enameled formed steel complying with ASME/ANSI A112.19.4W-1984. ~~Sheet-tinting-shall-not-be-added-to-any existing-bath-tub-in-a-building-designed-or-used-for-human-habitation-~~

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

**Section 890.650 Water Closets**

- a) Public Use.

- 1) Water closet bowls for public use shall be the elongated type and the seat shall be an antimicrobial plastic open-front seat.  
 Exception: Water closet bowls for public use may have closed front seats provided the seat is encased with a continuous plastic sleeve capable of providing a clean surface for every user.

- 2) The activating handle, button or mechanism of the flush valve shall be at least 22 inches above the overflow rim of the bowl.  
 Exception: The activating handle, button or mechanism for water closets installed to meet the "Illinois Accessibility Code" shall be at least ten (10) inches above the overflow rim of the bowl.

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- 3) Fixtures for the physically disabled shall comply with the rules of the Capital Development Board entitled "Illinois Accessibility Code" (71 Ill. Adm. Code 400).

- 4) In schools that are not licensed by the Illinois Department of Children and Family Services as day care centers or homes, water closets provided for the use of children under five (5) years of age shall be of size and height suitable for children's use, either child or juvenile type in accordance with ASME/ANSI A112.19.2M-1990.

- 5) Water closets designed for institutional use may be used in intensive care facilities and intensive coronary care facilities provided the water closet swings only horizontally and has an integral trap. A water closet flushometer shall be used to flush the fixture. The plans and specifications shall be submitted to the Department for approval prior to installation, and such approval shall be in writing from the Department provided the above requirements are met.

- b) Water Closet Tanks. Water closet tanks shall have a volume sufficient to properly flush the water closet bowls with which they are connected.

- c) Ball cocks. Ball cocks for flush tanks shall be of the anti-siphon type, properly installed, and have a provision for trap refill.

- d) Flushing Device. The flush valve seat in all water closet tanks shall be one (1) inch or more above the flood level rim of the water closet bowl, with the exception of one-piece water closets in accordance with ASME/ANSI A.112.19.2M-1990.

- e) Flushometer Valve. Flushometer valves shall comply with ANSI/ASSE 1037-1990. Flushometer valves shall be installed so that they are readily accessible for repair. When the valve is operated, it shall complete the cycle of operation automatically, opening fully and closing completely under the service pressure. At each operation the valve shall deliver water in sufficient volume and at a rate that will thoroughly flush the fixture and refill the fixture trap. Means shall be provided for regulating flush valve flow. Protection against backflow shall be provided by an approved vacuum breaker installed on the discharge side of the flushing valve. The bottom of the vacuum breaker, or the critical level line shown on the vacuum breaker, shall be at least four (4) inches above the overflow rim of the bowl (See Section 890.1140(a) and (b)). Not more than one water closet shall be served by a single flushometer valve.

- f) Seats. Water closets shall be equipped with seats of smooth non-absorbent material. All seats of water closets provided for public use shall be an antimicrobial plastic material and an open-front style, except closed-front seats may be provided if the seat is encased with a continuous plastic sleeve ensuring a clean surface for every user. No water closet seat shall be more than one and one-half (1 1/2) inches thick. Exception: Facilities for the physically disabled shall comply with the "Illinois Accessibility



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Code."

- g) A flushometer tank (or pressurized flushometer valve in accordance with ANSI/ASSE 1037-1990) shall be used only with a water closet bowl specifically designed for that type tank/flushing device (i.e., in accordance with ASME/ANSI A112.19.2M-1990) and where the flow pressure at the fixture meets the manufacturer's minimum recommendations.
- h) Water closets which rely on substances other than water for proper operation shall comply with requirements of the "Private Sewage Disposal Code" (77 Ill. Adm. Code 905). Privies and chemical toilets shall not be used inside any building.
- i) Bidet. A bidet shall be equipped with hot and cold water. An atmospheric vacuum breaker shall be installed on the discharge side of the flushing valve. The bottom of the vacuum breaker, or the critical level line shown on the vacuum breaker, shall be at least four (4) inches above the overflow rim of the bidet.
- j) Prohibited Water Closets. Hopper-style water closets and water closets with concealed couplings or submerged side inlets are prohibited. (See Appendix F: Illustration A.)

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 890.680 Lavatories

- a) Waste Outlets. Wastes shall have a strainer or stopper and have a waste outlet at least one and one-quarter (1 1/4) inches in diameter.
- b) Lavatory Faucets. All lavatory faucets shall have air gaps as specified in Appendix A: Table C.
- c) When self-closing faucets are located on lavatories in public restrooms, they shall be adjusted to remain open for a minimum of 15 seconds, have a 0.5 gpm flow restrictor in accordance with ASME/ANSI 112.18.1M-1989 and be designed for hot and cold water or only tempered water. Self-closing faucets on lavatories shall be adjusted to remain open for a minimum of 15 seconds. Lavatory faucets for public use or within public restrooms shall be of the self-closing type and shall have a 0.5 gpm flow restrictor in accordance with ASME/ANSI A112.18.1M-1989.
- d) Fixture Calculation. Eighteen (18) linear inches of wash sink or eighteen (18) inches of a circular basin, when provided with water outlets for such space, shall be considered equivalent to one lavatory. (See Appendix F: Illustration B.)
- e) Water Temperature. All lavatory faucets for public use shall be provided with an automatic safety water mixing device to prevent sudden unanticipated changes in water temperature or excessive water temperatures. The automatic safety water mixing device shall be either thermostatic pressure balance, or combination controlled, in accordance with ANSI/ASSE 1016-1990 or 1017-1990, adjusted to a maximum setting of 115°F, at the time of installation.

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(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 890.810 Minimum Number of Plumbing Fixtures

- a) Minimum Number of Fixtures Required. Plumbing fixtures shall be provided, for each building type and occupant load, in the minimum numbers shown in Appendix A, Table B, "Minimum Number of Plumbing Fixtures", except as noted in footnote 2. Questions concerning the minimum numbers of fixtures required for building types not listed in Appendix A, Table B, shall be referred to the Department in writing prior to construction for a decision concerning the minimum numbers (and types) of plumbing fixtures required. The Department's decision shall be in writing based on Appendix A, Table B.
- 1) Building Classification. For purposes of this Part, buildings shall be classified according to the types shown in Appendix A, Table B. Buildings that incorporate more than one type of building use or occupancy, as classified by the Department, shall provide the combined numbers of fixtures required for the individual uses. For example, a building that serves as both a restaurant and office building shall provide the minimum numbers of plumbing fixtures required for that portion operating as a restaurant plus the number of fixtures required for the office space.
- 2) Occupant Load. For those building types where the minimum number of plumbing fixtures required in Appendix A, Table B, is dependent upon the building's occupant load, such occupant load shall be the estimated total occupant load. Where the building's occupant load is not known or determinable, the following shall be used to estimate the total occupant load:

- A) In assembly places (sports arenas, stadiums, convention centers, theaters, auditoriums, gymnasiums, or other facilities for spectator events); worship places and funeral homes; schools; office buildings; restaurants; and mercantile units, the total occupant load (employees and public users of the facility) shall be based on the capacity of the rooms or spaces used for assembly purposes or other intended occupancy, and shall be determined as follows:
- i) In rooms or spaces with fixed seating, the occupant load shall be the actual number of seats provided. When no divisions between seats are provided (e.g., benches or pews), fixed seating shall be computed assuming 18 inches per person.
  - ii) In rooms or spaces without fixed seating, the occupant load shall be determined by dividing the gross floor area by the estimated floor area per person shown in the following table:



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Building Type or Occupancy	Floor Area per Person (Sq. Ft.)
Assembly Places - Facilities for Spectators Events; Worship Places and Funeral Homes	15
Museums, Libraries, Exhibition Areas and Similar Uses	40
Schools	50
Day Care Centers	70
Office Buildings	200
Restaurants, Clubs, Taverns, and Other Eating/Drinking Facilities	30
Mercantile Units, Except Grocery Stores:	
- First Floor	100
- All Other Floors	120
Combination Grocery Store/Non-Grocery Mercantile Units	150
Grocery Stores	200
Storage/Shipping Area	400
Power Plants/Industrial Units	500
iii) For a driver-in restaurant, the occupant load shall be considered as equal to the number of parking stalls.	

B) Dormitories and Institutions. For dormitories, penal institutions and other residential institutions other than hospitals, the total occupant load shall be based upon the number of beds in the dormitory or institution.

- b) Required Restroom Facilities and Drinking Fountains
- 1) Employee Restrooms and Drinking Fountains
- A) Restroom facilities and drinking fountains shall be provided for all employees within each place of employment. The minimum numbers of fixtures provided shall be based on the maximum number of male and female employees working at any one time, as shown in Appendix A, Table B. (The numbers of fixtures required for employees are included in the numbers shown in Table B for all building types/uses except Hospital Rooms, Penal Institutions, and Other Institutions. The entry in Appendix A, Table B, entitled "All Facilities for Employee Use" shall be used to determine the minimum number of fixtures required for employees in hospitals, penal/other institutions, and all other building/facilities that do not appear in Appendix A, Table B.)
- i) If there are more than five (5) employees working at any one time, separate restrooms for men and women shall be provided.

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- ii) If there are no more than five (5) employees working at any time, one (1) restroom may serve both sexes. A restroom must have a minimum of one (1) water closet and one (1) lavatory.
- iii) Location. For schools, day care centers and office buildings, the employee restrooms and drinking fountains shall be located on the same floor or one floor above or below each location where employees regularly work.
- iv) Kiosks, which are free standing places of employment located in the aisle of a mall or another building, that have five (5) or less employees at any time, who have access to public restrooms and a drinking fountain located inside the same building within 200 feet of the kiosks, shall not be required to have employee restroom facilities or a drinking fountain.
- B) If public restrooms and drinking fountains are also required for the building type, employees may share the restrooms and drinking fountain(s) with the public, provided the numbers of fixtures are sufficient for the combined numbers of males and females and the restrooms and drinking fountain(s) are provided within the place of employment (and within the required location for schools, day care centers and office buildings).
- C) Buildings Under Construction. For temporary buildings or buildings under construction which are not yet occupied for their intended purpose, sanitary facilities (including toileting and handwashing facilities) shall be provided for the convenience of all workers.
- i) Toileting facilities provided shall be enclosed and shall be discharged into a sanitary sewer. In lieu of connecting to a sewer, the sanitary facility provided shall be a portable, enclosed, chemically-treated, tank-tight unit.
- ii) Toileting facilities (water flush type or non-sewered units) shall be provided for employees at construction work sites; however, separate toileting facilities need not be provided for males and females if individual portable units are used. Toileting facilities shall be provided as follows: for one through 200 employees, one toilet facility shall be provided for every 40 employees or fraction thereof; for over 200 employees, one toilet facility shall be added for every 50 employees or fraction thereof. Agricultural work places with ten or more employees shall provide toileting facilities in compliance with the Department's rules entitled "Field Sanitation Code" (77 Ill. Adm. Code 910).

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- iii) All non-sewered units shall be pumped regularly to assure adequate working facilities.

## 2) Public Restrooms and Drinking Fountains

## A) General Requirements.

- i) Buildings with 5,000 square feet gross area or more to be used by the public shall provide public restrooms and drinking fountains as shown in Appendix A, Table B. Buildings, other than those exceptions in subsection (b)(2)(B) of this Section, with less than 5,000 square feet gross area to be used by the public need not provide public restrooms or drinking fountains.

- ii) Individual businesses within the same building, e.g., retail stores within and enclosed mall, may share public restroom facilities, provided the restrooms are designed for the combined occupant load of the individual businesses served, are always open when any individual business is open, and are not located more than 300 feet from the entrance of any business served. Exception: Any restaurant which sells food or beverage to be consumed on its premises or within the building/mall must be located no more than 100 feet from the shared public restrooms and must be on the same floor.

- iii) Where public restroom facilities are required by this Part, separate facilities for males and females shall be provided. If additional public restroom facilities are provided in excess of the minimum requirements of this Part, one restroom may serve both males and females; however, that restroom shall not have more than one (1) water closet and one (1) lavatory.

- iv) Where public restroom facilities are required by this Part, they shall be accessible to the public and meet the requirements of the "Illinois Accessibility Code" (71 Ill. Adm. Code 400). Where plumbing fixtures are installed for the physically disabled, such plumbing and plumbing fixtures shall comply with the "Illinois Accessibility Code".

## B) Additional Requirements for Special Building Types

- i) All restaurants which sell food or beverage to be consumed on the premises (regardless of their gross area) shall provide readily accessible restroom facilities for the public. If such public restrooms are not provided within the premises of the restaurant, they shall be located within the same building, on the same floor/level and within 100 feet of an entrance to the restaurant; and they shall be available for public use at all times that the

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restaurant is open. Exception: Restaurants with no more than ten (10) combined employees and seats (for patrons) at any one time need not provide public restrooms, provided the employee restroom(s) is (are) accessible and made available to the public.

- ii) All businesses selling motor vehicle fuel to the public (regardless of their gross area) shall provide at least one public restroom for male use and one public restroom for female use. Exception: Facilities that do not have any employees working as attendants any part of a twenty-four (24) hour period and sell only motor fuel to the public using automated machines need not provide male/female public restroom/drinking fountains. There shall be one (1) employee restroom for maintenance staff.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART I: WATER SUPPLY AND DISTRIBUTION

## Section 890.1130 Protection of Potable Water

- a) Cross Connection (Submergence). Potable water supply piping and water discharge outlets shall not be submerged in any sewage or toxic substance. Where potable water supply piping or water discharge outlets are submerged in other substances, they shall be provided with backflow protection as listed in Section 890.1140(f). (See Appendix I: Illustrations A, B and C.)
- b) Approval of Devices and Maintenance. All devices for the prevention of backflow or back siphonage shall comply with the standard listed in Appendix A, Table A, "Approved Standards for Plumbing Appliances/Appurtenances/Devices." Each double check valve backflow preventer assembly (DCV), double check backflow preventer with intermediate atmospheric vent assembly, and reduced pressure principle backflow preventer assembly (RPP) shall be tested in-line and approved by a cross-connection control device inspector before being placed into service. Such backflow preventers (DCVs, double check backflow preventer with intermediate atmospheric vent assemblies, and RPPs) installed in a potable water supply system shall be tested and maintained at least annually by a cross-connection control device inspector, and records to verify testing and maintenance shall be available at the site of the installation of the device or at other approved locations. (See Section 890.1130(g)(5).)
- c) Backflow. The water distribution system shall be protected against back siphonage and backflow. Each water outlet shall be protected from back siphonage and/or backflow by having the outlet end from which the water flows spaced a distance above the flood-level rim of

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the receptacle into which the water flows sufficient to provide a minimum fixed air gap. Where it is not possible to provide a minimum fixed air gap, the water outlet shall be equipped with an accessible backflow prevention device (e.g., a vacuum breaker or backflow preventer) complying with applicable standards.

- d) Fire Safety Systems. The installation of any fire safety system involving the potable water supply system shall be protected against backflow as follows:

- 1) A fire safety system that does not have chemical additives or a method of supplying chemical additives to the system, does not have any non-potable connection, does not have a fire department hose (siamese) connection, and has less than five (5) sprinkler heads shall be separated from the potable water supply system by a double check valve backflow preventer assembly.
- 2) A double detector check valve backflow preventer assembly shall be installed at the fire safety system's point of connection to the potable water supply when:
  - A) A fire safety system has no chemical additives, non-potable connection or fire department hose connection (but has five (5) or more sprinkler heads); or
  - B) A fire safety system has no chemical additives or non-potable connection, but has one (1) or more fire department hose connections (for boosting pressure and flow to the fire safety system) which are served only by fire fighting apparatus connected to a public water supply or a fire department which does not use chemical additives or rely upon any non-potable water supply.
- 3) A fixed air gap with a break tank or other storage vessel or a reduced pressure principle backflow preventer assembly (RPZ) shall be installed at the fire safety system's point of connection to the potable water supply when:
  - A) The fire safety system contains additives such as antifreeze, fire retardant or other chemicals. (The RPZ may be located at the point of connection to that section of the system containing such additives when the system's connection to the water supply is protected by a double detector check valve backflow preventer assembly); or
  - B) Non-potable water flows into the fire safety system by gravity; or
  - C) There is a permanent or emergency connection whereby water can be pumped into the fire safety system from any other non-potable source; or
  - D) Fire department connections are available that could permit water to be pumped into the fire safety system from a non-potable source capable of serving the fire safety system. (A non-potable source of water shall be considered capable of serving the fire safety system under the following conditions: It must be capable of year-round use,

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maintained with at least 50,000 gallons of usable water not subject to freezing, accessible to fire fighting pumper equipment, and located within 1,700 feet of the facility.)

- e) Prohibited Connections.

- 1) Sewage Lines. There shall be no direct connection between potable water lines and lines, equipment and vessels containing sewage. Such connections shall be made only through a minimum fixed air gap as outlined in Section 890.1140(a).
- 2) Chemical or Petroleum Pressure Vessels. There shall be no direct connection between any potable water supply and any pressure vessel, i.e., storage tank, tank car, tank truck or trailer or other miscellaneous pressurized tank or cylinder containing or having contained liquified gaseous petroleum products or other liquified gaseous chemicals. Where it is necessary to discharge from a potable water line to such a vessel, such discharge shall be through a minimum fixed air gap as outlined in Section 890.1140(a). Exception: Chemical pressure vessels containing chemicals used in the water treatment process, for uses other than private purposes, are exempt from the provisions of this subsection.
- 3) If water under pressure is required, as in subsections (e)(1) and (2) of this Section, it shall be supplied by means of an auxiliary pump taking suction from a tank provided for this purpose only with an overrim supply having the required minimum fixed air gap.
- 4) Refrigerant Condensers. A potable water line to a single wall refrigerant condenser shall be provided with a backflow preventer complying with ASSE. 1012 or 1013.
- 5) No pipe or fitting of the water supply system shall be drilled or tapped nor shall any band or saddle be used except at the water main in the street. Exception: See Section 890.320(h) for potable water use only.
- f) Devices for the Protection of the Potable Water Supply. Approved backflow preventers or vacuum breakers shall be installed with all plumbing fixtures and equipment that may have a submerged potable water supply outlet and that are not protected by a minimum fixed air gap. Connection to the potable water supply system for the following fixtures or equipment shall be protected against backflow with one of the appropriate devices as indicated below:
  - 1) Inlet to receptacles containing non-toxic substances (steam, compressed air, food, beverages, etc.):
    - A) fixed air gap fitting;
    - B) reduced pressure principle backflow preventer assembly;
    - C) atmospheric vacuum breaker unit;
    - D) double check valve backflow preventer assembly; or
    - E) double check backflow preventer with atmospheric vent assembly.
  - 2) Inlet to receptacles containing toxic substances of low or



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moderate toxicity (vats, storage containers, plumbing fixtures, etc.):

- A) fixed air gap fitting;
  - B) reduced pressure principle backflow preventer assembly; or
  - C) atmospheric vacuum breaker unit.
- 3) Outlets with hose attachments which may constitute a cross connection:

- A) fixed air gap fitting;
- B) reduced pressure principle backflow preventer assembly; or
- C) atmospheric vacuum breaker unit.

- 4) Coils or jackets used as heat exchangers in compressors, degreasers, and other such equipment involving toxic substances:

- A) fixed air gap fitting; or
- B) reduced pressure principle backflow preventer assembly.

5) Direct connections which are subject to back pressure:

- A) Receptacles containing non-toxic substances (vats, storage containers, plumbing fixtures, etc.):

- i) fixed air gap fitting;
- ii) reduced pressure principle backflow preventer assembly;
- iii) double check valve backflow preventer assembly; or
- iv) double check backflow preventer with atmospheric vent assembly.

- B) Receptacles containing toxic substances of low or moderate toxicity (vats, storage containers, etc.):

- i) fixed air gap fitting; or
- ii) a reduced pressure principle backflow preventer assembly.

- 6) Inlet to or direct connection with sewage or lethal substances of high toxicity: fixed air gap fitting.

## g) Installation of Devices.

- 1) Devices of All Types. Backflow preventers and back siphonage-preventing devices shall be installed so as to allow accessibility, observation, maintenance and replacement services. No backflow preventer assembly shall be installed where it would be subject to freezing conditions.

- 2) All in-line backflow/back siphonage preventers shall have a full port type valve with a resilient seated shut-off valve on each side of the preventer and located within five (5) feet of the preventer.

- 3) A protective strainer shall be located upstream of the first check valve on all backflow/back siphonage preventers unless the device contains a built-in strainer. Fire safety systems are exempt from the strainer requirement.

- 4) Atmospheric Vacuum Breakers. Vacuum breakers shall be installed with the critical level above the flood level rim of the fixture they serve, and on the discharge side of the last control valve of the fixture. No shut-off valve or faucet shall be installed

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beyond the vacuum breaker. (See Section 890.1140(a), (b) and (c).)

- 5) Double Check Valve, Double Check with Intermediate Atmospheric Vent, and Reduced Pressure Principle Backflow Preventer Assemblies. No in-line double check valve backflow preventer Assembly (DCV), double check backflow preventer with intermediate atmospheric vent assembly, or reduced pressure principle backflow preventer assembly (RPZ) shall be located more than five (5) feet above a floor, or be installed where it is subject to freezing or flooding conditions. After installation, each double check valve (DCV), double check with intermediate atmospheric vent, and reduced pressure principle (RPZ) backflow preventer assembly shall be field tested in-line in accordance with the manufacturer's instructions by a cross-connection control device inspector before initial operation. (See subsection (b) of this Section.)

- 6) Closed water systems (as created by properly installed backflow prevention devices) shall have a properly sized thermal expansion tank located in the cold water supply as near to the water heater as possible and with no shut-off valve or other device between the heater and the expansion tank. Exception: In existing buildings with a closed water system, a properly sized relief valve may be substituted in place of a thermal expansion tank. For enclosed water systems created by backflow protection in manufactured housing, as required in Section 890.1140(i), a ballcock with a relief valve may be substituted for the thermal expansion tank.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 890.1140 Special Applications and Installations

- a) An atmospheric vacuum breaker shall be installed between the control valve and the fixture and in such a manner that it will not be subject to water pressure, except the pressure incidental to water flowing to the fixture. An atmospheric vacuum breaker shall be installed on the outlet side of the control valve.

- b) Flushometer Valve. Flush valves shall be equipped with vacuum breakers installed on the discharge side of the flushing valve with the critical level at least four (4) inches above the overflow rim of the bowl or four (4) inches above the top of the urinal. (See Appendix I: Illustration D.)

- c) Flushing Tanks. Flushing tanks shall be equipped with anti-siphon ball cocks. The ball cock shall be installed with the critical level of the vacuum breaker at least one (1) inch above the full opening of the overflow pipe. In cases where the ball cock has no hush tube, the bottom of the water supply inlet shall be installed one (1) inch above

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d) the top of the overflow pipe. (See Section 890.650(d).)  
Lawn Sprinklers. Any lawn sprinkler system connected to a potable water supply shall be equipped with a reduced pressure principle backflow preventer assembly (RPZ). The RPZ may be located outside provided it conforms with Section 890.1130(g)(1).  
e) Valve Outlets for Hose Attachments.

1) All threaded valve outlets shall have backflow protection in accordance with Section 890.1130. All outside threaded valve outlets shall not be subject to freezing.

2) Yard hydrants shall be installed as follows:

A) Potable Water

i) All hydrants with threaded spigots shall have backflow protection attached to the hydrant spigot (if threaded); and

ii) Hydrants with buried drain down (weep) holes shall have the drain down (weep) holes protected from ground water backup by proper open site drainage.

A backflow preventer shall not be used on the buried drain down (weep) hole to protect the hydrant from ground water backup.

B) Non-potable Water

One or more hydrants may be installed for non-potable use if they are isolated from the potable water supply by a properly installed backflow preventer device. The hydrants must be clearly identified as non-potable by color (see Section 890.1120) and bear a sign that reads as follows:

"This water unsafe for drinking."

f) Commercial Laundry Machines. The potable water supply to commercial laundry machine(s) shall be protected against back siphonage by an air gap or backflow protection device. If a vacuum breaker is used, it shall be a minimum of 26 inches above the top of the machine.

g) Commercial Dishwashers. Commercial dishwashers shall be equipped with an approved vacuum breaker located in the rinse water supply line on the discharge side of the final control valve, a minimum distance of six (6) inches above the uppermost spray outlets. The cold water or make-up water supply line shall be provided with an air gap or a vacuum breaker located on the discharge side of the final control valve, a minimum distance of six (6) inches above the overflow level or flood rim.

h) Aspirators. Water operated aspirators shall meet the following specifications:

1) The water supply line shall be equipped with a shut-off valve.

A) In operating rooms, emergency rooms, recovery rooms, delivery rooms, autopsy rooms, dental offices and laboratories where aspirators are installed for removing blood, pus and/or other fluids, a vacuum breaker shall be installed on the discharge side of the control valve, at ceiling height (a minimum of seven (7) feet, six (6)

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inches); or a reduced pressure principle backflow preventer assembly shall be used.

B) Water operated aspirators used for dispensing detergent shall be protected against backflow and back siphonage by an atmospheric vacuum breaker or a reduced pressure principle backflow preventer assembly.

2) The aspirator water discharge shall be provided with a two (2) inch air gap to the receiving fixture.

i) Manufactured Housing and Mobile Home Units Manufactured Prior to June 15, 1976. At the time of water service connection, backflow protection must be installed between the water service line and any manufactured housing or mobile home unit that was manufactured prior to June 15, 1976 which does not conform to the requirements of this Part. Backflow protection shall be provided by at least a dual check valve. Backflow preventer assembly (Duc) conforming to ANSI/ASSE 1024-1990. This backflow protection must be installed in all instances where a unit manufactured prior to June 15, 1976 is connected or re-connected to a water service line, e.g., for connection of a new unit, connection of a relocated unit, or re-connection of a unit that was disconnected to allow repairs to the water line; however, backflow protection is not required for existing units unless a new connection or re-connection to the water service line occurs.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 890.1150 Water Service Pipe Installation

a) Underground Water Service.

Water service pipe shall be installed in accordance with either subsections (1) or (2) of this Section and meet the requirements of both subsections (a)(3) and (4) of this Section, one of the following methods:

1) Water service and building drain or building sewer may be installed in separate trenches with a minimum of ten (10) feet horizontal separation. Such installation shall use material listed in Appendix A, Table A ("Approved Materials for Building Sewer" and "Approved Materials for Water Service Pipe"), provided that such material is specific for this type of installation. (See Appendix I: Illustration E.)

2) The water service and the building drain or building sewer may be installed in the same trench provided that the water service is placed on a solid shelf a minimum of 18 inches above the building drain or building sewer. For such installation, the building sewer shall be of material listed in Appendix A: Table A ("Approved Building Drainage/Vent Pipe") for a building drain. (See Appendix I: Illustration F for the proper installation of



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- water service, building drain and building sewer.)
- 3) The minimum depth for any water service pipe shall be at least 36 inches or the maximum frost penetration of the local area, whichever is of greater depth.
  - 4) No water service pipe shall be installed or permitted outside of a building or in an exterior wall unless adequate provisions are made to protect such pipe from freezing.
  - b) Potable Water Piping and Sewer Crossing Installation Requirements.
    - 1) Where it is necessary for the potable water piping to pass above a sewer, such piping shall be installed with a minimum vertical separation of 18 inches.
    - 2) Where it is necessary for the potable water piping to pass beneath a sewer (or drain), the sewer (or drain) shall be of materials as specified in Appendix A: Table A for building drains ("Approved Building Drainage/Vent Pipe") and shall extend on each side of the crossing to a distance of at least ten (10) feet as measured at right angles to the water line. The potable water piping shall comply with Appendix A: Table A as specified for a water service pipe ("Approved Materials for Water Service Pipe"). (See Appendix I: Illustration G.)
    - c) Stop-And-Waste Valve. Combination stop-and-waste valves and cocks shall not be installed in an underground potable water pipe. Frost free hydrants and fire hydrants shall not be considered stop-and-waste valves. (See Section 890.1140(e).)

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 890.1210 Design of a Building Water Distribution System

- a) Design and Installation. The design and installation of the hot and cold water building distribution systems shall provide a volume of water at the required rates and pressures to ensure the safe, efficient and satisfactory operation of fixtures, fittings, appliances and other connected devices during periods of peak use. No distribution pipe or pipes shall be installed or permitted outside of a building or in an exterior wall unless adequate provisions are made to protect such pipe from freezing.
- b) Size of Water Distribution Pipes. The fixture supply for each fixture shall be at least the minimum size provided in Appendix A, Table D. The size of all other water distribution pipes shall be determined by calculating the water supply demand (in water supply fixture units) for that portion of the water distribution system served by the pipe. Using Appendix A, Tables M, N, O, P and Q, the cumulative water supply demand or load shall be calculated for all fixtures, piping, valves and fittings served by the water distribution pipe, and the pipe shall meet the minimum size provided in Appendix A, Table N or O, as applicable. Exception: As an alternative to using Tables M, N, O, P,

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- and Q to design and size the piping in the water distribution system, the system may be designed and sized employing current engineering practices, provided the design/plans are approved in writing by an Illinois licensed professional engineer, an Illinois licensed architect or an individual Certified in Plumbing Engineering (C.I.P.E.) by the American Society of Plumbing Engineers and approved in writing by the Department.
- c) Minimum Water Pressure. The minimum constant water service pressure on the discharge side of the water meter shall be (at least) 20 p.s.i.; and the minimum constant water pressure at each fixture shall be at least eight (8) p.s.i. or the minimum recommended by the fixture manufacturer.
  - d) Auxiliary Pressure. Supplementary Tank. If the pressure in the system is below the minimum 8 p.s.i. at the highest water outlet when the flow in the system is at peak demand, an automatically controlled pressure tank or gravity tank of a capacity to supply sections of the building installation which are too high to be supplied directly from the public water main shall be installed.
  - e) Low Pressure Cut-Off. When a booster pump except those used for fire protection is used on an auxiliary pressure system, there shall be installed a low-pressure cut-off switch on the booster pump to prevent the creation of pressures less than five (5) p.s.i. on the suction side of the pump. A shut-off valve shall be installed on the suction side of the water system and within five (5) feet from the pump suction inlet, and a pressure gauge shall be installed between the shut-off valve and pump.
  - f) Water Hammer. All building water supply systems in which quick-acting valves are installed shall be provided with air chambers or approved mechanical devices or water hammer arrestors to absorb high pressures resulting from the quick-closing of these valves. Water pressure absorbers shall be placed as close as possible to the quick-acting valves or be installed at the ends of long pipe runs or near batteries of fixtures.
    - 1) Air Chambers - Where an air chamber is installed in a fixture supply, it shall be at least twelve (12) inches in length and at least the same size as the fixture supply. Where an air chamber is installed in a riser, it shall be at least 24 inches in length and at least the same size as the riser.
    - 2) Mechanical Devices - Where a mechanical device or water hammer arrestor is used, the manufacturer's specifications for location and installation shall be followed.
  - g) Excessive Static Water Pressure.
    - 1) When water main pressure exceeds 80 p.s.i., a pressure reducing valve and a strainer with a by-pass relief valve shall be installed in the water service pipe near the entrance to the building to reduce the water pressure to 80 p.s.i. or lower, except where the water service pipe supplies water directly to a water pressure booster system, an elevated water tank, or to



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pumps provided in connection with a hydro pneumatic or elevated water supply tank system. Sill cocks and outside hydrants may be left on full water main pressure.

- 2) When the water pressure exceeds 80 p.s.i at any plumbing fixture, a pressure reducing valve and a strainer with a by-pass relief valve shall be installed in a water supply pipe serving the fixture to reduce the water pressure at the fixture to 80 p.s.i or lower.

h) Approval of Auxiliary Pressure Systems. Whenever in any building, structure, or premises receiving its potable water supply from the public water system, a pump or any other device for increasing the water pressure is to be installed, plans of such installation shall be approved by the Department prior to installation in accordance with Section 890.1940.

- i) Variable Street Pressures. When the water main has a wide fluctuation in pressure, the water distribution system shall be designed for minimum pressure available at the main.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 890.1230 Safety Devices

- a) All equipment used for heating water or storing hot water shall be provided, at the time of installation of such equipment, with an appropriate relief valve or valves to protect against excessive or unsafe temperature and/or pressure. This shall be achieved by installing either a pressure relief valve and a temperature relief valve or by installing a combination pressure-temperature relief valve.

b) Pressure and Temperature Relief Valves.

- 1) Pressure Relief Valves. Pressure relief valves shall have an ASME relief rating to meet the pressure conditions specified on the equipment served. They shall be installed in the cold water supply line to the heating equipment served, except where scale formation from hard water may be encountered, in which case they shall be installed in the hot water supply line from the heating equipment served. There shall not be a shut-off valve between the pressure relief valve and the tank. Except where an alternate design is approved by the Department in writing pursuant to Section 890.140(a)(2) or 890.1940, the pressure relief valve must be set to open at a maximum of the working pressure rating of the water heater, but shall not exceed 150 p.s.i. Each pressure relief valve shall have a test lever.

- 2) Temperature Relief Valves. Temperature relief valves shall bear an American Gas Association (AGA) relief rating, expressed in British Thermal Units (BTU) of heat input per hour, for the equipment served. They shall be installed so that the

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temperature sensing element is immersed in the hottest water within the top six (6) inches of the tank. The valve shall be set to open full when the stored water temperature is 210 degrees Fahrenheit.

c) Combination Pressure-Temperature Relief Valves.

- 1) Combination pressure-temperature relief valves shall comply with the applicable requirements as listed in Appendix A, Table A ("Approved Standards for Plumbing Appliances/Appurtenances/Devices") for individual pressure and individual temperature relief valves, and shall be installed so that the temperature sensing element is immersed in the hottest water within the top six (6) inches of the tank and have a test lever.

- 2) A check valve or shut-off valve shall not be installed between any safety device and the hot water equipment, nor shall there be any shut-off valve in the discharge pipe from the relief valve. (See Appendix I: Illustrations N and O.)

- 3) Energy cut-off devices shall not be used in lieu of subsections (c) (1) and (2) of this Section and shall be of a design to properly serve the intended use of the plumbing appliance, appurtenance or device. Exception: Instantaneous cut-off devices are exempted or may be used.

d) Relief Discharge Outlet.

- 1) A relief discharge outlet shall be indirectly connected to waste. The discharge pipe from the relief valve shall not be located so as to create a safety hazard or to discharge in such a way as to cause damage to the building or its contents. The relief valve shall not discharge through a wall into the outside atmosphere or where there is a possibility of freezing.

- 2) No reduced coupling, valve or any other restriction shall be installed in the discharge line of any relief valve that would impede the flow of discharge. The discharge line shall be installed from the relief valve to within six (6) inches of the floor or receptor and the end of such line shall not be threaded.

- 3) Any piping used for discharge from the relief valve shall be of metallic material and conform with the requirements of Appendix A, Table A ("Approved Materials for Water Distribution Pipe") for potable water piping and shall drain continuously downward to the outlet.

- 4) The discharge piping shall discharge indirectly into a floor drain, hub drain, service sink, sump or a trapped and vented P-trap which is located in the same room as the water heater. (See Sections 890.1010 and 890.1050(a), (b) and (c).) The trap must have a deep seal to protect against evaporation or shall be fed by means of a priming device designed and installed for that purpose. (The use of a light grade oil in the trap will retard evaporation.)

- e) Pressure Marking - Hot Water Storage Tank. Hot water storage tanks

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shall be permanently marked in an accessible place with the maximum allowable working pressure.

- f) Vacuum Relief Valve. Where a hot water storage tank or water heater is located at an elevation above the fixture outlets in the hot water system, or if the storage tank or water heater is bottom fed, a vacuum relief valve as listed in Appendix A, Table A ("Approved Standards for Plumbing Appliances/Appurtenances/Devices"), shall be installed on the storage tank or heater.

- g) Multiple Temperature Hot Water Systems. Such systems shall be provided with thermostatic mixing valves to properly control the desired temperatures.

- h) Shower Compartments and Shower-Bath Combinations. All shower compartments and shower-bath combinations shall be provided with an automatic safety water mixing device to prevent sudden unanticipated changes in water temperature or excessive water temperatures. The automatic safety water mixing device shall be either thermostatic, pressure balance, or combination controlled, in accordance with ANSI/ASSE 1016-1990, and designed with a maximum handle rotation limit/stop, adjusted to a maximum setting of one hundred fifteen (115) degrees F. at the time of installation. The temperature of mixed water provided to multi-shower units or gang showers shall be controlled by a master automatic safety water mixing device or the mixed water temperature for such showers shall be individually regulated by automatic safety mixing valves for each shower unit. A hot water heater thermostat shall not be an acceptable alternative water temperature control device. (See Section 890.690(b).)

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

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Section 890.APPENDIX A Plumbing Materials, Equipment, Use Restrictions and Applicable Standards

## Section 890.TABLE A Approved Building Drainage/Vent Pipe

- 1) Acrylonitrile Butadiene Styrene (ABS) Pipe

## Joints

- 2) Solvent Cement(1)

- 3) Brass Pipe

- 3) Cast Iron Pipe

- 4) Copper/Copper Alloy Pipe

- 5) Copper/Copper Alloy Tubing  
(K-L-M or DWV)(2)

- 6) Galvanized Steel Pipe(2)

- 7) Glass Fiber Borosilicate Pipe(3)

- 8) High Silicon Content Cast Iron Pipe(3)

- 9) Polypropylene Pipe (3)

- 10) Polyvinyl Chloride (PVC) Clear Pipe(3)

- 11) Polyvinyl Chloride (PVC) Pipe and Fittings

- 12) Polyvinyl Chloride (PVC) Pipe with Cellular Core(4)

## Joints

## Primer

## Solvent Cement(1)

- 13) Polyvinylidene Fluoride (3)

- 14) Solder

## Agency Notes:

- (1) Solvent cement must be handled in accordance with ASTM F 402-1988.
- (2) Type M copper tubing, DWV copper tubing, and galvanized steel pipe are approved for above-ground uses only.
- (3) Approved for corrosive waste or corrosive soil conditions.
- (4) PVC pipe with cellular core is approved only for gravity drainage and venting. It is not approved for pressurized drain, waste or venting applications.

## Section 890.TABLE A Approved Materials for Building Sewer

- 1) Acrylonitrile Butadiene Styrene (ABS) Pipe

ASTM D 2661-1987

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- Joints  
Solvent Cement(1)  
2) Asbestos Cement Pipe  
3) Bituminized Fiber Pipe  
4) Cast Iron Soil Pipe/Fittings  
Hubless Soil Pipe  
Rubber Gaskets  
5) Copper/Copper Alloy Tubing  
6) Concrete Pipe  
7) Polyvinyl Chloride (PVC) Pipe
- Joints  
Primer  
Solvent Cement(1)  
8) Vitrified Clay Pipe Pressurized by a Pump or  
Ejector is Prohibited  
9) Solder
- Agency Note:  
(1) Solvent cement must be handled in accordance with ASTM F 402-1988.
- Section 890.TABLE A Approved Materials for Water Service Pipe
- 1) Acrylonitrile Butadiene Styrene (ABS) Pipe
- Joints  
Solvent Cement(1)  
2) Brass Pipe  
3) Cast Iron (ductile iron)  
Water Pipe  
4) Chlorinated Polyvinyl Chloride (CPVC) Pipe
- Joints  
Solvent Cement (Orange)(1)  
5) Copper/Copper Alloy Pipe  
6) Copper/Copper Alloy Tubing  
7) Galvanized Steel Pipe  
8) Poly Butylene (PB) Pipe/Tubing
- ASTM D 2751-1988  
ASTM F 628-1988  
ASTM D 2235-1988  
ASTM D 2235-1988  
ASTM C 428-1981  
ASTM D 1861-1988  
ASTM D 1862-1988  
ASTM A 74-1987  
CISPI 301-1990  
CISPI 310-1990  
ASTM C 564-1989  
ASTM A 88-1986  
ASTM C 14-1988  
ASTM C 76-1988  
ASTM D 2665-1988  
ASTM D 2949-1987  
ASTM D 3034-1988  
ASTM D 2855-1983  
ASTM F 656-1988  
ASTM D 2564-1988  
ASTM C 4-1981  
ASTM C 700-1988  
ASTM B 32-1989

- 9) Polyethylene (PE) Pipe  
10) Polyethylene (PE) Tubing  
11) Polyvinyl Chloride (PVC) Pipe
- Joints  
Primer  
Solvent Cement(1)  
12) Welded Copper Water Tube  
13) Solder
- Agency Note:  
(1) Solvent cement must be handled in accordance with ASTM F 402-1988.
- Section 890.TABLE A Approved Materials for Water Distribution Pipe
- 1) Brass Pipe  
2) Chlorinated Polyvinyl Chloride  
(CPVC) Pipe/Tubing
- Joints  
Solvent Cement (Orange)(1)  
3) Copper/Copper Alloy Pipe  
4) Copper/Copper Alloy Tubing  
5) Cross Linked Polyethylene(2)  
6) Galvanized Steel Pipe  
7) Poly Butylene (PB) Pipe/Tubing  
8) Welded Copper Water Tube  
9) Solder
- Agency Notes:  
(1) Solvent cement must be handled in accordance with ASTM F 402-1988.  
(2) Cross Linked Polyethylene is approved only for above-ground use.
- Section 890.TABLE A Approved Materials and Standards for Plumbing Fixtures and  
Fixture Fittings
- 1) Bathtub Liners (plexiglass/ABS  
or acrylic/plastic)
- ASTM D 2666-1988  
ASTM D 3309-1988  
ASTM D 2239-1988  
ASTM D 2737-1988  
ASTM D 1785-1988  
ASTM D 2241-1988  
ASTM D 2672-1988  
ASTM D 2855-1983  
ASTM F 656-1988  
ASTM D 2564-1988  
ASTM B 447 WK,  
WL, and WM-1989  
ASTM B 32-1989

ANSI Z124.8-1990  
or acrylic/plastic



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- 2) Bathtubs, Plastic  
ANSI Z124.1-1987 and  
ANSI Z124.1a & b-1990
- 3) Bidets  
ASME/ANSI A112.19.2M-1990
- 4) Enameled Cast Iron Plumbing Fixtures  
ASME/ANSI A112.19.1M-1987
- 5) Fittings:  
Plumbing Fixture Fittings  
(metering valves, faucets, etc.)  
Suction Fittings for Use in  
Swimming Pools, Wading  
Pools, Spas, Hot Tubs and  
Whirlpool Bathtub Appliances
- 6) Floor Drains  
ANSI A112.21.1M-1980(R1990)
- 7) Flushometer Bowls  
ASME/ANSI A112.19.2M-1990
- 8) Flushometers  
ANSI/ASSE 1037-1990  
PDI (G101) 1985
- 9) Grease Interceptors  
ASME/ANSI A112.19.2M-1990
- 10) Low Consumption (1.6 gpf) Water Closets(1)  
ANSI-#124-i-1987-and  
ANSI-#124-ia-end-b---1998
- 11) Plastic Lavatory  
ANSI Z124.3a-1990
- 12) Plastic Shower Receptors/Shower Stalls  
ANSI Z124.2a-1990
- 13) Plastic Water Closets Bowls/Tanks  
ANSI Z124.4-1986 and ANSI  
Z124.4a-1990
- 14) Porcelain Enameled Formed Steel  
ASME/ANSI A112.19.4M-1984
- 15) Plumbing Fixtures, including  
Bathtub Liners
- 16) Stainless Steel Plumbing Fixtures  
(Residential)  
ASME/ANSI A112.19.3M-1987
- 17) Vitreous China Plumbing Fixtures  
ASME/ANSI A112.19.2M-1990
- 18) Whirlpool Bathtub Appliances  
ASME/ANSI A112.19.7M-1987
- Agency Notes:  
The water pressure at each fixture installation shall meet the manufacturer's  
minimum recommended level for the fixture.
- 19) Low-consumption--(1.6-gpf)--water--closets--are--ON54-APPROVED-POR-SINGLE  
FAM154-RESIDENTIAL-USE-
- Section 890. TABLE A Approved Standards for Plumbing  
Appliances/Appurtenances/Devices
- 1) Anti-Backflow Freezerless Wall Hydrants  
ANSI/ASSE 1019-1978
- 2) Anti-Scald Control Valve  
ANSI/ASSE 1016-1990
- 3) Anti-siphon Self Drawing Frost  
Proof Sillcock  
ANSI/ASSE 1019-1978
- 4) Automatic Ice Making Equipment  
NSF Std. #12-1987
- 5) Automatic Storage Type Water Heater  
Less Than 75,000 BTU/HR  
ASHRAE 90A-1980/

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- 6) Back Water Valves  
ANSI Z21.10.1a-1991
- 7) Circulating Tank, Instantaneous  
ASME/ANSI A112.14.1-1986
- 8) Circulating Tank, Instantaneous, Automatic  
ANSI Z21.10.1a-1991/UL 499  
ANSI Z21.10.3a-1990/UL  
174-1977
- 9) Detergent/Chemical Feeders for Commercial  
Use  
NSF Std. #29-1987
- 10) Dishwashing Machine (Commercial)  
ANSI/ASSE 1004-1990
- 11) Dishwashing Machine (Residential)  
ANSI/ASSE 1006-1986
- 12) Diverters for Residential-Anti-Siphon  
ASME 1025-1978
- 13) Double Check Detector Assembly  
ANSI/ASSE 1048-1990
- 14) Double Check With Atmospheric Vent  
ASME 1012-1978
- 15) Double Check Valve Assembly  
ASME 1015-1988
- 16) Drinking Fountains  
ARI 1010-1985 or  
ANSI A112.19.2M-1990
- 17) Drinking Water Treatment Units-  
Health Effects  
NSF Std. #53-1982
- 18) Drinking Water Treatment Units-  
Aesthetic Effects  
NSF Std. #42-1982
- 19) Drinking Water Treatment Chemicals  
NSF Std. #60-1986
- 20) Dual Check Valve  
ANSI/ASSE 1024-1990
- 21) Dual Check Valve (Carbonated Beverage)  
(Relief Port Required)  
ASME 1032-1980
- 22) Food Waste Disposal (Commercial)  
ANSI/ASSE 1009-1990
- 23) Food Waste Disposal (Residential)  
ASME 1008-1986
- 24) Gas Water Heater Above 75,000 BTU  
ANSI Z21.10.3a-1990/AGA
- 25) Gas Water Heater 75,000 BTU or Less  
ANSI Z21.10.1a-1991/AGA
- 26) Gas Water Heater (Continuous Use)  
ANSI Z21.10.1a-1991
- 27) Gas Water Heater - Space Heating  
ANSI Z21.10.1a-1991
- 28) Grease Interceptors  
PDI-G 101-1985
- 29) Handheld Showers  
ASME 1014-1990
- 30) Home Laundry Equipment  
ASME 1007-1986
- 31) Hot Water Dispensers-Electrical  
ANSI/ASSE 1023-1979
- 32) Hot Water Generating/Heat  
Recovery Equipment  
NSF Std. #5-1983  
UL 563-1975
- 33) Ice Makers  
ANSI/ASSE 1016-1990
- 34) Mixing Valves  
Individual Thermostatic Pressure Balancing  
and Combination Control Valves  
Temperature Actuated Mixing Valves,  
Domestic Use  
ASME 1017-1986
- 35) Oil Fired Water Heaters  
UL 732-1975/ASME 1975
- 36) Pressure Relief Valve  
ANSI Z21.22-1986
- 37) Pressurized Flushing Device  
ANSI/ASSE 1037-1990
- 38) Reduced Pressure Detector Assembly  
ANSI/ASSE 1047-1990
- 39) Reduced Pressure Principle Backflow  
Preventer  
ASME 1013-1988
- 40) Refuse Compactors/Compactor System  
NSF Std. #13-1987

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- 41) Relief Valves For Hot Water System ANSI Z21.22-1986  
42) Reverse Osmosis Drinking Water Treatment System NSF Std. #58-1986  
43) Spray Type Dishwashing Machine for Commercial Use NSF Std. #3-1989  
44) Trap Seal Primer Valve ASSE 1018-1986  
45) Vacuum Breakers, Anti-siphon ANSI/ASSE 1001-1990  
46) Vacuum Breakers Hose Connection ANSI/ASSE 1011-1982  
47) Vacuum Breaker (Laboratory Faucet) ANSI/ASSE 1035-1984  
48) Vacuum Breakers Pressure Type ASSE 1020-1989  
49) Vacuum Relief Valve ANSI Z21.22-1986  
50) Vending Machine for Food/Beverage NSF Std. #25-1987  
51) Water Closet Tank Ball Cock ASSE 1002-1986  
52) Water Hammer Arresters ASSE 1010-1982  
53) Water Heater Drain Valve ASSE 1005-1986  
54) Water Pressure Reducing Valves (Domestic) ANSI/ASSE 1003-1982

Section 890. TABLE A Approved Standards for Fittings

- 1) Cast Iron Threaded Drainage Fittings ASME/ANSI B16.12-1991  
2) Cast Copper Alloy Solder Pressure Fittings ANSI B16.18-1984  
3) Cast Copper Alloy Solder Drainage Fitting (DWV) ANSI B16.23-1984  
4) Copper Fittings ASME B16.15-1985  
ANSI B16.18-1984  
ASME/ANSI B16.22-1989  
ANSI B16.23-1984  
ASME/ANSI B16.26-1988  
ASME/ANSI B16.29-1986  
ASME/ANSI B16.32-1984  
ASME/ANSI B16.11-1991  
5) Forged Steel Fittings, Socket, Welded, Threaded AWWA C 110-1987  
6) Gray Iron/Ductile Iron AWWA C 151-1986  
ASME/ANSI B 16.3-1985  
ASTM D 2466-1988  
ASTM D 2467-1988  
ASTM D 2468-1988  
ASTM D 2564-1988  
ASTM D F409-1988  
ASTM D F438-1988  
ASTM D F439-1988  
ANSI A12.18.1M-1989  
7) Malleable Iron ASME/ANSI B 16.9-1986  
8) Plastic ASME/ANSI B 16.11-1991  
ASME/ANSI B 16.28-1986  
ASME/ANSI B 16.22-1989  
9) Plumbing Fixture Fittings (Metering valves, faucets, etc.)  
10) Steel  
11) Wrought Copper/Bronze Solder Pressure Fitting

- 12) Wrought Copper and Wrought Copper Alloy Solder [Drainage Fittings] ASME/ANSI B16.29-1986  
ASME/ANSI B16.22-1989  
ASME/ANSI B16.9-1986  
ASME/ANSI B16.28-1986  
13) Wrought Steel Buttwelding Fittings  
14) Wrought Steel Buttwelding Short Radius Ells  
(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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Laundry Washing  
Machine For  
each 4 units  
for-Washer(5)

Section 890. TABLE B Minimum Number of Plumbing Fixtures

Type of Building	All Facilities for Employee Use		Single Dwelling or Unit of Multiple Dwelling; Condo. or Apartment; or Hotel/Motel Unit	
	Male	Female	Male	Female
Water closets (Fixtures per person)	For 1-5	Total	1 per dwelling or unit	
	Employees See Section 890.810(b)(1)			
	1: 1- 15	1: 1- 15		
	2: 16- 35	2: 16- 35		
	3: 36- 55	3: 36- 55		
	4: 56- 80	4: 56- 80		
	5: 81-110	5: 81-110		
Urinals	Over 110, add 1	fixture per restroom for each additional 40 males/females.		
	(See Footnote #1)			
Lavatories(3) (Fixtures per person)	See footnote #2	See footnote #2	None	
	1: 1- 15	1: 1- 15	1 per dwelling or unit	
	2: 16- 35	2: 16- 35		
	3: 36- 60	3: 36- 60		
	Over 60, add 1 fixture per restroom for each additional 45 males/females.			
Bathtubs/Showers	1 per 10(7)	1 per 10(7)	1 per dwelling or unit	
	(If Required)			
Drinking fountains (4) (Fixtures per person)	1 per 75		None	
Other Fixtures(5)	None		1 Double Kitchen Sink; 1 Laundry Tray or 1 Automatic Connection	



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Type of Building	Dormitories	Assembly Places: Sports Arenas, Stadiums, Convention Halls, Etc.	
		Male	Female
Water Closet (Fixtures per person)		Male 1 per 10 Add 1 fixture for each additional 25 males over 10; and 1 for each additional 20 females over 8.	Female 1 per 8 2: 1-100 3: 101-150 4: 151-200 5: 201-300 6: 301-400 7: 401-500 8: 501-650 9: 651-800 Over 800, add 1 fixture for each additional 700 males and 1 for each 200 females. See Footnote #1
Urinals (Fixtures per person)		1 per 25 Over 150, add 1 fixture for each 50 males added; over 400, add 1 for each 200 males added.(2)	See Footnote #2 1: 1-100 2: 101-200 3: 201-400 4: 401-600 Over 600, add 1 fixture for each additional 250 persons.
Lavatories(3) (Fixtures per person)		1 per 12 Over 12, add 1 fixture for each additional 20 males and 1 for each 15 females.	1 per 12 1: 1-200 2: 201-400 3: 401-750 Over 750, add 1 fixture per restroom for each added 400 males/females.
Bathtubs, Showers (Fixtures per person)		1 per 8 For females, add 1 bathtub per 30; over 150, add 1 per 50.	None

Type of Building	Dormitories	Assembly Places: Sports Arenas, Stadiums, Convention Halls, Etc.	
		Male	Female
Drinking Fountains(4) (Fixtures per person)		1 per 75	1: 1-100 Over 100, add 1 for each added 150; over 1000 add 1 for each added 500; over 5000, add 1 for each added 1000.
Other Fixtures (Fixtures per person)		1 Service Sink per floor	1 Service Sink per floor

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Type of Building	Assembly Places: Theaters, Auditoriums, Other Facilities for Spectator Events		Worship Places and Funeral Homes		Businesses Selling Motor Fuel to the Public	
	Male	Female	Male (See Footnote #1)	Female	Male	Female
Water Closet (Fixtures per person)	1: 1-100	2: 1-100	1 per 250	1 per 125	1 per station	1 per station
	2:101-200	3:101-150				
Urinals (Fixtures per person)	3:201-400	4:151-200	1 per 250	See Footnote #2	None	None
	4:400-800	5:201-300				
Lavatories(3) (Fixtures per person)	6:301-400	6:351-500	1 per 125	1 per 125	1 per station	1 per station
	7:401-500	7:501-650				
Drinking Fountains(4) (Fixtures per person)	8:501-650	8:651-800	1 Service Sink		None	
	9:651-800	Over 800, add 1 fixture for each additional 400 males and 1 for each 170 females.				
Other Fixtures (Fixtures per person)	Over 800, add 1 fixture for each additional 300 males.	See Footnote #1				
	1: 1-100	See				
Lavatories(3) (Fixtures per person)	2:101-200	Footnote #2				
	3:201-400					
Other Fixtures (Fixtures per person)	4:401-600	Over 600, add 1 fixture for each additional 300 males.				
	Over 600, add 1 fixture for each additional 300 males.					
Drinking Fountains(4) (Fixtures per person)	1: 1-200	1:1: 1-200				
	2:201-400	2:2:201-400				
Other Fixtures (Fixtures per person)	3:401-750	3:3:401-750				
	Over 750, add 1 fixture per restroom for each added 400 males/females.	Over 750, add 1 fixture per restroom for each added 350 males/females.				
Other Fixtures (Fixtures per person)	1: 1-100	1: 1-100 i-per-75				
	Over 100, add 1 for each added 150; over 1000, add 1 for each added 500; over 5000, add 1 for each added 1000	Over 100, add 1 for each added 150; over 1000, add 1 for each added 500; over 5000, add 1 for each added 1000.				
Other Fixtures (Fixtures per person)	1 Service Sink per Floor	1 Service Sink per Floor				

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Type of Building	Office Buildings/ Public Buildings		Restaurants, Pubs, Lounges, Nightclubs, and Places Serving Food or Liquid to be Consumed on the Premises(8)	
	Male	Female	Male	Female
Water Closet (Fixtures per person)	1: 1-15	1: 1-15	1: 1-100	1: 1-50
	2: 16-35	2: 16-35	2:101-300	2: 51-100
	3: 36-55	3: 36-55		3:101-150
	4: 56-80	4: 56-80		4:151-300
	5: 81-110	5: 81-110	Over 300, add 1 fixture for each additional 200 males and 1 fixture per each 100 females. See Footnote #1.	
Urinals (Fixtures per person)	Over 110, add 1 fixture per restroom for each additional 40 males/ females. See Footnote #1			
	See Footnote #2	See Footnote #2	1: 1-150 Over 150, add 1 fixture for each added 150 males.	See Footnote #2
Lavatories(3) (Fixtures per person)	1: 1-15	1: 1-15	1: 1-100	1: 1-100
	2: 16-35	2: 16-35	2:101-200	2:101-200
	3: 36-60	3: 36-60	3:201-400	3:201-400
	4: 61-90	4: 61-90	Over 400, add 1 fixture per restroom for each additional 200 males/ females.	Over 400, add 1 fixture per restroom for each additional 200 males/ females.
	5:91-125 Over 125, add 1 fixture per restroom for each additional 45 males/ females. See Footnote #1		See Footnotes #1 and #6	
Drinking Fountains(4) (Fixtures per person)	1 per 75		None	
Other Fixtures (Fixtures per person)	1 Service Sink per floor		1 Service Sink and 1 3-Compartment Sink as required by 77 Ill. Adm. Code 750 See Footnote #6	

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Type of Building	Schools-Student Use: Nursery, Elementary		Schools-Student Use: Secondary, Colleges, Universities, Adult Centers, etc.	
	Male	Female	Male	Female
Water Closets (Fixtures per person)	1:1-20 2:21-50 Over 50 add 1 fixture per restroom for each additional 50 persons. See Footnote #1	1:1-20 2:21-50	1 per 40 See Footnote #1	1 per 20
	See Footnote #2	See Footnote #2	1 per 35	See Footnote #2
	1:1-25 2:26-50 Over 50, add 1 fixture per restroom for each additional 50 persons. See Footnote #1	1:1-25 2:26-50	1 per 40 1 per exercise room	1 per 40
			1 per 75	
Drinking Fountains(4) (Fixtures per person)				
Other Fixtures (Fixtures per person)	1 Service Sink per floor		1 Service Sink per floor	



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Type of Building	Day Care Centers (All Ages)	
	Male	Female
Water Closets (Fixtures per person)	1: 1-10 2: 11-25 3: 26-50 4: 51-75 5: 76-100 6: 101-125 7: 126-150 8: 151-175 Over 175: Add a fixture per restroom for each additional males/females. Footnote #1	1: 1-10 2: 11-25 3: 26-50 4: 51-75 5: 76-100 6: 101-125 7: 126-150 8: 151-175 Over 175: Add a fixture per restroom for each additional males/females. Footnote #1
Urinals (Fixtures per person)	See Footnote #2	See Footnote #2
Lavatories(3) (Fixtures per person)	1: 1-10 2: 11-25 3: 26-50 4: 51-75 5: 76-100 6: 101-125 7: 126-150 8: 151-175 Over 175: Add a fixture per restroom for each additional males/females. Footnote #1	1: 1-10 2: 11-25 3: 26-50 4: 51-75 5: 76-100 6: 101-125 7: 126-150 8: 151-175 Over 175: Add a fixture per restroom for each additional males/females. Footnote #1
Drinking Fountains(4) (Fixtures per person)	1 per 75	
Other Fixtures	1 Service Facility	1 Service Sink Per

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Type of Building	Hospital Individual Room	Hospitals Ward Room
Water Closets (Fixtures per person)	1 per room	1 per 8 patients
Urinals (Fixtures per person)	None	None
Lavatories(3) (Fixtures per person)	1 per room	1 per 8 patients
Bathtubs, Showers (Fixtures per person)	1 per room	1 per 8 patients
Drinking Fountains(4) (Fixtures per person)	None	1 per 75
Other Fixtures (Fixtures per person)	1 Service Sink per floor	1 Service Sink per floor

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Type Of Building	Institutional-Other than Hospitals or Penal Institutions (on each floor)	Penal Institutions For Prisoner Use Cells or Dormitories
	Male	Female
Water Closets (Fixtures per person)	1 per 25	1 per 20
Urinals (Fixtures per person)	1 per 50(#2)	See Footnote #2
Lavatories(3) (Fixtures per person)	1 per 10	1 per 10
Bathtubs/Showers (Fixtures per person)	1 per 8	1 per 8
Drinking Fountains(4) (Fixtures per person)	1 per 75	1 per 75
Other Fixtures (Fixtures per person)	1 Service Sink per floor	1 Service Sink per floor

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Instructions/Footnotes For Table B

The numbers of fixtures required for employees are included in the numbers shown in Table B for all building types/uses except Hospital Rooms, Penal Institutions, and Other Institutions. The entry in Table B entitled "All Facilities for Employee Use" shall be used to determine the minimum number of fixtures required for employees in hospitals, penal/other institutions, and all other buildings/facilities that do not appear in Table B. Questions concerning the minimum numbers of fixtures required for building types not listed in Appendix A, Table B, shall be referred to the Department in writing prior to construction for a decision concerning the minimum numbers (and types) of plumbing fixtures required.

Footnotes:

1. The figures shown are the minimum number of fixtures required for the number of persons indicated or any fraction thereof. Based on the total occupant load determined, the number of fixtures shall be calculated assuming fifty (50) percent of the occupants are male and fifty (50) percent are female. The total male/female occupants shall be calculated first; then the number of fixtures for each (males/females) shall be determined from the appropriate table.
2. Urinals may be substituted for water closets for males, not to exceed one-half (1/2) of the required total number of water closets. Comparable fixtures for females may be substituted for water closets for females, not to exceed one-half (1/2) of the required total number of water closets.
3. 18 lineal inches of wash sink or 18 inches of a circular basin, when provided with water outlets for such space, shall be considered equivalent to one lavatory.
4. Whenever a drinking fountain is required by this code, bottled drinking water or a water dispensing faucet (water station) may be substituted for a drinking fountain, provided it is readily accessible to the public. When bottled drinking water is provided in lieu of a drinking fountain, the bottled water used must be commercially sealed in accordance with the Illinois "Bottled Water Act" (Ill. Rev. Stat. 1991, ch. 111 1/2, par 121.100 et seq.) (815 ILCS 310) or must comply with the Department's "Public Area Sanitary Practice Code" (77 Ill. Adm. Code 895).
5. The kitchen sink and laundry tray or connection for the washer are not required for the hotel/motel unit.
6. In addition to providing separate handwashing facilities in the kitchen for employees, all restaurants shall provide a minimum of one (1) service/utility sink and one three-compartment sink to sanitize dishes and eating utensils; however, a mechanical dishwasher may be substituted for a three-compartment sink to sanitize dishes and utensils. (See 77 Ill. Adm. Code 750.)
7. When bathtubs/showers are required for employees by OSHA requirements, collective bargaining agreements, etc., they shall be provided at the rate of 1 per 10 employees.

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8. Restaurants with no more than ten (10) combined employees and seats (for patrons) at any one time need not provide public restrooms, provided the employee restroom(s) is (are) accessible and made available to the public.
9. Bed and Breakfast facilities with more than five (5) rooms shall meet minimum requirements of the Code for Hotel/Motel units. Bed and Breakfast facilities with five (5) or less rooms, and in conformance with P.A. 85-0399 need not provide individual restrooms for each bedroom.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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Section 890. TABLE M Load Values Assigned to Fixtures

Load Values Assigned to Fixtures

Fixture	Occupancy	Type of Supply Control	Load Values in Water (Supply Fixture Units)	Cold	Hot	Total
Water Closet	Public	Flush Valve	10	-	-	10
Water Closet	Public	Flush Tank	5	-	-	5
Urinal	Public	1" Flush Valve	10	-	-	10
Urinal	Public	3/4" Flush Valve	5	-	-	5
Urinal	Public	Flush Tank	3	-	-	3
Lavatory	Public	Faucet	1.5	1.5	2	2
Bathtub	Public	Faucet	3	3	4	4
Shower Head	Public	Mixing Valve	3	3	4	4
Service Sink	Offices, etc.	Faucet	2.25	2.25	3	3
Kitchen Sink	Hotel/Restaur. Office, etc.	Faucet	3	3	4	4
Drinking Fountain	Private	3/8" Valve	0.25	-	0.25	0.25
Water Closet	Private	Flush Valve	6	-	-	6
Water Closet	Private	Flush Tank	3	-	-	3
Lavatory	Private	Faucet	0.75	0.75	1	1
Bathtub	Private	Faucet	1.5	1.5	2	2
Shower Stall	Private	Mixing Valve	1.5	1.5	2	2
Kitchen Sink	Private	Faucet	1.5	1.5	2	2
Laundry Trays (1 to 3)	Private	Faucet	2.25	2.25	3	3
Combination Fixture	Private	Faucet	2.25	2.25	3	3
Dishwashing Machine	Private	Automatic	-1	-1	1	1
Laundry Machine (8 lb)	Private	Automatic	1.5	1.5	2	2
Laundry Machine (8 lb)	Public/General	Automatic	2.25	2.25	3	3
Laundry Machine (8 lb)	Public/General	Automatic	3	3	4	4
Laundry Machine (16 lb)	Public/General	Automatic	5	-	5	5
Stair-Deck	Public/General	Faucet	5	-	5	5



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General

Note: For fixtures not listed, loads shall be assumed by comparing the fixtures to one listed using water in similar quantities and at similar rates. The assigned loads for fixtures with both cold and hot water supplies are given for separate cold and hot water loads and for total load.

Where a unit of local government does not require separate water service lines for irrigation or similar systems that are likely to impose continuous demands (e.g., lawn sprinkler or air conditioning systems), the following rule applies: estimate the continuous demand (in gallons per minute) for such outlets/systems separately from the intermittent demand from the above fixtures, and add this amount to the demand of the fixtures (in gallons per minute).

Fire sprinkler systems are exempt from this table.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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Section 890. TABLE N Water Supply Fixture Units (W.S.F.U.) for a Supply System with Flush Tanks

Water Supply Fixture Units (W.S.F.U.) for a Supply System with Flush Tanks

W.S.F.U.	Demand (GPM)	Pipe Size (Inches)	Pressure Loss		Velocity (Ft./Sec.)	Meter Size (Inches)
			(PSI/100' of Pipe)			
2	2	1/2"	4.2	2.7	5/8"	
4	3	1/2"	8.7	4.2	5/8"	
6	5	1/2"	22.5	7.0	5/8"	
8	6.5	3/4"	6.3	4.3	5/8"	
10	8	3/4"	9.0	5.4	3/4"	
12	9.2	3/4"	11.5	6.1	3/4"	
14	10.4	3/4"	15.0	6.9	3/4"	
16	11.6	3/4"	18.0	7.7	3/4"	
20	14	1"	7.2	5.6	3/4"	
25	17	1"	10.0	6.6	3/4"	
30	20	1"	13.6	8.0	1"	
35	22.5	1 1/4"	5.8	5.7	1"	
40	25	1 1/4"	7.0	6.3	1"	
45	27	1 1/4"	8.2	6.9	1"	
50	29	1 1/4"	9.5	7.4	1"	
60	32	1 1/2"	5.0	5.8	1 1/2"	
70	35	1 1/2"	6.2	6.4	1 1/2"	
80	38	1 1/2"	7.0	7.2	1 1/2"	
90	41	1 1/2"	8.0	7.5	1 1/2"	
100	43.5	1 1/2"	8.7	7.8	2"	
120	48	2"	2.7	5.0	2"	
140	52.5	2"	3.1	5.4	2"	
160	57	2"	3.6	5.8	2"	
180	61	2"	3.9	6.1	2"	
200	65	2"	4.5	6.6	2"	
225	70	2"	5.2	7.1	2"	
250	75	2"	6.0	7.7	3"	
275	80	2 1/2"	2.6	5.5	3"	
300	85	2 1/2"	2.9	5.8	3"	
350	95	2 1/2"	3.5	6.5	3"	
400	105	2 1/2"	4.2	7.1	3"	
450	115	2 1/2"	5.0	8.0	3"	
500	125	3"	2.3	5.9	3"	
600	145	3"	3.1	6.8	4"	

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Water Supply Fixture Units (W.S.F.U.) for a  
Supply System with Flush Tanks

W.S.F.U.	Demand (GPM)	Pressure Loss		Velocity (Ft./Sec.)	Meter Size (Inches)
		Pipe Size (Inches)	(PSI/100' of Pipe)		
750	170	3"	4.0	8.0	4"
1000	208	4"	1.5	5.7	4"
1250	240	4"	1.9	6.4	4"
1500	267	4"	2.3	7.0	4"
1750	294	4"	2.8	7.8	4"
2000	320	6"	0.36	3.7	6"

Agency Notes:

1 Where a unit of local government does not require separate water service lines for irrigation or similar systems that are likely to impose continuous demands (e.g., lawn sprinkler or air conditioning systems), the following rule applies: estimate the continuous demand (in gallons per minute) for such outlets/systems separately from the intermittent demand from the above fixtures, and add this amount to the demand of the fixtures (in gallons per minute).

2 Meter and meter yoke sizes shown in this table shall apply only to those jurisdictions or governmental units where local ordinances do not prescribe specific sizes of meters and/or meter yokes. Where local ordinances cover such sizing, local requirements shall be followed.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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Section 890.TABLe O Water Supply Fixture Units (W.S.F.U.) for a Supply System with Flushometer

Water Supply Fixture Units (W.S.F.U.) for a  
Supply System with Flushometer

W.S.F.U.	Demand (GPM)	Pipe Size (Inches)	Pressure Loss		Velocity (Ft./Sec.)	Meter Size (Inches)
			(PSI/100' of Pipe)	(Ft./100')		
10	27	1 1/4"	8.3	6.8	3/4"	3/4"
12	28.6	1 1/4"	9.2	7.2	3/4"	3/4"
14	30.2	1 1/4"	10	7.9	3/4"	3/4"
16	31.8	1 1/4"	11	8.0	3/4"	3/4"
20	35	1 1/2"	6.0	6.4	3/4"	3/4"
25	38	1 1/2"	7.0	6.9	1"	1"
30	41	1 1/2"	8.0	7.4	1"	1"
35	43.8	1 1/2"	8.8	8.0	1"	1"
40	46.5	2"	2.5	4.7	1"	1"
45	49	2"	2.7	5.1	1"	1"
50	51.5	2"	2.9	5.4	1 1/2"	1 1/2"
60	55	2"	3.4	5.8	1 1/2"	1 1/2"
70	58.5	2"	3.7	6.0	1 1/2"	1 1/2"
80	62	2"	4.0	6.2	1 1/2"	1 1/2"
90	64.8	2"	4.6	6.5	1 1/2"	1 1/2"
100	67.5	2"	5.0	6.8	1 1/2"	1 1/2"
120	72.5	2"	5.6	7.2	2"	2"
140	77.5	2"	6.3	8.0	2"	2"
160	82.5	2 1/2"	2.7	5.7	2"	2"
180	87	2 1/2"	3.0	6.1	2"	2"
200	91.5	2 1/2"	3.4	6.4	2"	2"
225	97	2 1/2"	3.7	6.8	2"	2"
250	101	2 1/2"	4.0	7.1	3"	3"
275	106	2 1/2"	4.2	7.3	3"	3"
300	110	2 1/2"	4.6	7.6	3"	3"
350	119	3"	2.1	5.5	3"	3"
400	126	3"	2.3	5.9	3"	3"
450	138	3"	2.7	6.3	3"	3"
500	145	3"	3.0	6.8	3"	3"
600	160	3"	3.6	7.4	4"	4"
750	178	4"	1.1	4.7	4"	4"
1000	208	4"	1.5	5.6	4"	4"
1250	240	4"	1.9	6.4	4"	4"
1500	267	4"	2.3	7.0	4"	4"

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Water Supply Fixture Units (W.S.F.U.) for a  
Supply System with Flushometer

W.S.F.U.	Demand (GPM)	Pipe Size (Inches)	Pressure Loss		Velocity (Ft./Sec.)	Meter Size (Inches)
			(PSI/100' of Pipe)	(Inches)		
1750	294	4"	2.8	7.8	4"	
2000	321	6"	0.4	3.7	6"	

Agency Notes:

1 Where a unit of local government does not require separate water service lines for irrigation or similar systems that are likely to impose continuous demands (e.g., lawn sprinkler or air conditioning systems), the following rule applies: estimate the continuous demand (in gallons per minute) for such outlets/systems separately from the intermittent demand from the above fixtures, and add this amount to the demand of the fixtures (in gallons per minute).

2 Meter and meter yoke sizes shown in this table shall apply only to those jurisdictions or governmental units where local ordinances do not prescribe specific sizes of meters and/or meter yokes. Where local ordinances cover such sizing, local requirements shall be followed.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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Section 890.TABLE P Demand at Individual Water Outlets  
Demand at Individual Water Outlets

Type of Outlet	uDemand (g.p.m.)
Ordinary Lavatory Faucet	2.0
Self Closing Lavatory Faucet	2.5
Sink Faucet, 3/8" or 1/2"	4.5
Sink Faucet, 3/4"	6.0
Bath Faucet, 1/2"	5.0
Shower Head, 1/2"	5.0
Laundry Faucet, 1/2"	5.0
Ballcock in Water Closet Flush Tank	3.0
1" Flush Valve (25 psi flow pressure)	35.0
1" Flush Valve (15 psi flow pressure)	27.0
3/4" Flush Valve (15 psi flow pressure)	15.0
Drinking Fountain Jet	0.75
Dishwashing Machine (domestic)	4.0
Laundry Machine (8 to 16 pounds)	4.0
Aspirator (operating room or laboratory)	2.5
Hose-Bibb-or-Sill-Cock	5.0

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Private Sewage Disposal Code2) Code Citation: 77 Ill. Adm. Code 905

3) Section Numbers: Proposed Action:  
905.15 Amendment  
905.100 Amendment

4) Statutory Authority: Implementing and authorized by the Private Sewage Disposal Licensing Act [225 ILCS 225].

5) A Complete Description of the Subjects and Issues Involved: The rules governing the installation of private sewage disposal systems will be amended to update a standard of the National Sanitation Foundation International (NSF) that is incorporated by reference in these rules. Standard 40 published by NSF specifies approval criteria for individual aerobic wastewater treatment plants. The Department requires manufacturers to have aerobic treatment plants tested and approved under Standard 40 in order to be approved for installation in Illinois. NSF has updated Standard 40 in an edition released in May 1996 and is no longer testing under the July 1990 edition that is referenced in the Department's rules. This amendment will update the rules to reflect the 1996 edition of Standard 40 to allow manufacturers whose products are being tested under the new standard to be in compliance with the Department's rules.

6) Will this Rulemaking Replace an Emergency Rule Currently in Effect? No

7) Does this Rulemaking Contain an Automatic Repeal Date? No

8) Does this Rulemaking Contain Any Incorporations By Reference? Yes

9) Are there any other Proposed Amendments Pending on this Part? No

10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State Mandate.

11) Time, Place, and Manner in which Interested Persons May Comment on this Rulemaking: Interested persons may present their comments concerning these rules by writing within 45 days after this issue of the *Illinois Register* to:

Ms. Gail M. DeVito  
Division of Legal Services  
Illinois Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, IL 62761  
217/782-2043  
E-mail: rules@dph.state.il.us

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12) Initial Regulatory Flexibility Analysis:

- A) Type of Small Businesses, Small Municipalities and Not-for-Profit Corporations Affected: Private Sewage disposal installation contractors
- B) Reporting, Bookkeeping or Other Procedures Required for Compliance: None
- C) Types of Professional Skills Necessary for Compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on the most recent regulatory agenda because: The decision to promulgate the rulemaking was not made when the Regulatory Agenda was finalized.

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER I: WATER AND SEWAGE

## PART 905

## PRIVATE SEWAGE DISPOSAL CODE

Section	
905.10	Definitions
905.15	Incorporated and Referenced Materials
905.20	General Requirements
905.30	Approved Private Sewage Disposal Systems
905.40	Septic Tanks
905.50	Distribution Boxes
905.55	Subsurface Seepage System Design Requirements
905.60	Subsurface Seepage System Construction Requirements
905.70	Buried Sand Filters
905.80	Recirculating Sand Filter
905.90	Waste Stabilization Ponds
905.100	Aerobic Treatment Plants
905.110	Effluent Discharges
905.120	Disinfection
905.125	Pumps, Pumping/Dosing Chambers and Ancillary Equipment
905.130	Human Waste Disposal
905.140	Holding Tanks
905.150	Sanitary Dump Stations
905.160	Swimming Pool Wastewater
905.170	Servicing, Cleaning, Transporting and Disposing of Wastes from Private Sewage Disposal Systems
905.180	Examinations for Licensure
905.190	Installation Approval
905.200	Licenses and Fees
905.210	Notification of Disposal Site (Repealed)
APPENDIX A	Illustrations and Exhibits
ILLUSTRATION A	Quantity of Sewage Flows
ILLUSTRATION B	Approved Plastic Pipe Materials (Repealed)
ILLUSTRATION C	List of Approved Plastic Pipe for Private Sewage Disposal System
ILLUSTRATION D	Location of Components of Private Sewage Disposal Systems
ILLUSTRATION E	Septic Tanks
EXHIBIT A	Septic Tank with Slip-In Baffles
EXHIBIT B	Septic Tank with T-Baffles
EXHIBIT C	Typical Gas Deflection Devices
ILLUSTRATION F	Minimum Volumes for Septic Tanks Serving Residential Units
ILLUSTRATION G	Instructions for Conducting Percolation Tests
ILLUSTRATION H	Subsurface Seepage System Size Determination
EXHIBIT A	Gravel System
EXHIBIT B	Gravelless System

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ILLUSTRATION I	Seepage Field Construction
EXHIBIT A	Gravel System
EXHIBIT B	Size and Spacing - Gravel System
EXHIBIT C	Gravelless System
EXHIBIT D	Size and Spacing - Gravelless System
ILLUSTRATION J	Septic Tank Subsurface Seepage Field
EXHIBIT A	Plan View - Gravel System
EXHIBIT B	Section View - Gravel System
EXHIBIT C	Plan View - Gravelless System
EXHIBIT D	Section View - Gravelless System
ILLUSTRATION K	Serial Distribution
EXHIBIT A	Plan View #1 - Gravel System
EXHIBIT B	Section View #1 - Gravel System
EXHIBIT C	Plan View #2 - Gravel System
EXHIBIT D	Section View #2 - Gravel System
EXHIBIT E	Plan View #1 - Gravelless System
EXHIBIT F	Section View #1 - Gravelless System
EXHIBIT G	Plan View #2 - Gravelless System
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ILLUSTRATION L	Seepage Bed
EXHIBIT A	Plan View
EXHIBIT B	Side View
EXHIBIT C	End View
ILLUSTRATION M	Soil Suitability for On-Site Sewage Design
EXHIBIT A	Loading Rates in Square Feet Per Bedroom and Gallons/Square Feet/Day
EXHIBIT B	Key for Determining Sewage Loading Rates (Gallons/Square Feet/Day)
ILLUSTRATION N	Buried Sand Filter
EXHIBIT A	Plan View
EXHIBIT B	Section View
EXHIBIT C	End View
ILLUSTRATION O	Recirculating Sand Filter System
EXHIBIT A	System Diagram
EXHIBIT B	Flow Splitter Detail
ILLUSTRATION P	Recirculating Sand Filter Sizing Chart
ILLUSTRATION Q	Recirculating Tank Pump Control
ILLUSTRATION R	Waste Stabilization Pond
EXHIBIT A	Plan View
EXHIBIT B	Section View
EXHIBIT C	Waste Stabilization Pond Surface Area in Square Feet
ILLUSTRATION S	Chlorine Contact Tank
EXHIBIT A	Minimum Required Chlorine Contact Tank Volume
EXHIBIT B	Chlorine Feeder, Contact Tank, and Sampling Port
ILLUSTRATION T	Sanitary and Concrete Vault Privy
ILLUSTRATION U	Septic Privy Distribution System
EXHIBIT A	Plan View
EXHIBIT B	Section View

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ILLUSTRATION V Sanitary Dump Station  
 EXHIBIT A Section View #1  
 EXHIBIT B Plan View  
 EXHIBIT C Section View #2  
 ILLUSTRATION W Swimming Pool Backwash Water Holding Tank  
 ILLUSTRATION X Local Authorities (Repealed)  
 APPENDIX B Telephone or Address Inquiries to the Regional Office

AUTHORITY: Implementing and authorized by the Private Sewage Disposal Licensing Act [225 ILCS 225].

SOURCE: Filed October 19, 1974, effective October 25, 1974; rules repealed, new rules adopted at 6 Ill. Reg. 3095, effective March 9, 1982; amended at 8 Ill. Reg. 8552, effective June 4, 1984; codified at 8 Ill. Reg. 19821; amended at 9 Ill. Reg. 20738, effective January 3, 1986; amended at 10 Ill. Reg. 11054, effective July 1, 1986; amended at 20 Ill. Reg. 2431, effective March 15, 1996; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

NOTE: In this Part, superscript numbers or letters are denoted by parentheses; subscript are denoted by brackets.

## Section 905.15 Incorporated and Referenced Materials

The following standards of nationally recognized organizations and federal and State regulations are incorporated or referenced in this Part:

- a) The following materials are incorporated by reference:
  - 1) NSF International National-Sanitation-Foundation, Criteria C-9, Evaluation of Special Processes, Components, or Devices Used in Treating Wastewater (1990) published by:  
 NSF International The-National-Sanitation-Foundation  
 3475 Plymouth Road, P.O. Box 1468  
 Ann Arbor, Michigan 48106  
 Referenced in Section 905.30
  - 2) ANSI/NSF International, Standard Number 40, Residential Wastewater Treatment Systems Individual---Aerobic---Wastewater Treatment-Plants (May 28, 1996 July-1999) published by:  
 NSF International  
 3475 Plymouth Road, P.O. Box 1468  
 Ann Arbor, Michigan 48106  
 Referenced in Section 905.100
  - 3) NSF International National-Sanitation-Foundation, Standard Number 41, Wastewater Recycle/Reuse and Water Conservation Devices (1990) published by:  
 NSF International The-National-Sanitation-Foundation  
 3475 Plymouth Road, P.O. Box 1468  
 Ann Arbor, Michigan 48106  
 Referenced in Section 905.130
  - 4) American Society for Testing and Materials (ASTM) required

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standards are listed under Section 905. Appendix A of this Part. List of approved plastic pipe for private sewage disposal system uses and standards may be obtained from:  
 American Society for Testing and Materials 1916 Race Street  
 Philadelphia, Pennsylvania 19103  
 Referenced in Section 905.40, 905.60, 905.70  
 5) Standard Methods for Examination of Water and Wastewater published by:  
 American Public Health Association  
 1015 8th Street  
 Washington, D.C. 20036  
 Referenced in Section 905.110  
 6) Glossary of Soil Science Terms (July 1987) published by:  
 The Soil Science Society of America  
 677 South Segoe Road  
 Madison, Wisconsin 53711  
 7) Title 40 of the Code of Federal Regulations, Standards for the Use or Disposal of Sewage Sludge (40 CFR 503)  
 Referenced in Section 905.170  
 8) National Electrical Code, 1993 Edition, published by:  
 National Fire Protection Association  
 Batterymarch Park  
 Quincy, Massachusetts 02269  
 Referenced in Section 905.20

b) The following materials are referenced in this Part:

- 1) Department of Public Health regulations
  - A) Private Sewage Mound Code (77 Ill. Adm. Code 906)  
 Referenced in Section 905.30
  - B) Illinois Plumbing Code (77 Ill. Adm. Code 890)  
 Referenced in Sections 905.140, 905.150 and Appendix A: Illustration C of this Part
  - C) Recreational Area Code (77 Ill. Adm. Code 800)  
 Referenced in Section 905.150
  - D) Rules of Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100)
- 2) Pollution Control Board regulations
  - A) Introduction (35 Ill. Adm. Code 301)  
 Referenced in Section 905.110
  - B) Permits (35 Ill. Adm. Code 309)  
 Referenced in Sections 905.110 and 905.170
  - C) Waste Disposal (35 Ill. Adm. Code Subtitle G)  
 Referenced in Sections 905.20 and 905.140
- c) All incorporations by reference of federal regulations and the standards of nationally recognized organizations refer to the regulations and standards on the date specified and do not include any additions or deletions subsequent to the date specified.
- d) All citations to federal regulations in this Part concern the specified regulation in the 1994 Code of Federal Regulations, unless



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- 5 750
- 6 900
- 7 1000
- 8 1200
- 9 1350
- 10 1500

- e) Installation. All components of aerobic treatment plants shall be installed at the time of the original installation. If this is not possible, a solid end cap shall be securely placed over the end of the discharge line until the system can be completed. This will prevent the discharge of raw sewage to the ground surface.
- f) Accessibility for inspection and maintenance. The plant shall be equipped with one or more grade-level access manholes located to permit periodic physical inspection and maintenance of all compartments and component parts. Component parts include submerged bearings, moving parts, tubes, intakes, slots, filters, and other devices. Grade level access manholes shall be installed in a manner to prohibit the entry of soil, water and dirt into the unit.
- g) Service. Devices falling within the scope of Standard 40 require periodic maintenance to achieve performance consistent with demonstrated capabilities. Implicit in Standard 40 is the recognition that assured professional service is imperative. Standard 40 and this Part require a 2-year service policy to be provided as part of the initial service agreement. (Note: The following initial service policy includes items not included in the NSF Standard 40 service policy.)

- 1) Initial service policy: A 2-year policy shall be furnished to the purchaser by the private sewage disposal installation contractor through the manufacturer or the distributor of the aerobic treatment unit. This policy shall provide:
  - A) Four inspection/service calls, at least one every 6 months, which includes inspection, adjustment, and servicing of the mechanical and the applicable component parts to ensure proper function;
  - B) For an effluent quality inspection consisting of a visual check for color, turbidity, scum overflow, and an examination for odors;
  - C) For improper operation which cannot be corrected at that time, to be reported to the owner immediately. This shall be followed with a written report which includes the date for the condition to be corrected.
- 2) Continuing service policy: Each manufacturer shall make available for purchase by the owner a continuing service policy with terms equal to the initial service policy.
- 3) Standby parts: Standby mechanical and electrical component parts shall be stocked by the local distributor for use when the plant's mechanical or electrical components must be removed from

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- e) All materials incorporated by reference are available for inspection and copying at the Department's Central Office, Division of Environmental Health, 525 West Jefferson, Springfield, Illinois 62761.
- (Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 905.100 Aerobic Treatment Plants

- a) General. Aerobic treatment plants shall be listed by NSF International as complying with the requirements of ANSI/NSF Standard Number 40, Residential Wastewater Treatment Systems Individual-Aerobic Wastewater-Treatment, May 28, 1996 July--1998. Standard 40 is a standard which covers plants for treatment of wastewater from individual homes. This Part shall allow NSF approved aerobic treatment plants to serve residential property that is occupied on a year-round or full-time basis. Aerobic treatment plants shall not be used to serve residential property which is used as a seasonal, weekend or part-time residence.
- b) Class II Effluent. Aerobic treatment plants listed by NSF for Class II effluent (BOD5-60mg/l and Suspended Solids 100 mg/l) shall discharge to one of the following:
  - 1) A subsurface seepage system designed and constructed in accordance with the requirements of Section 905.60.
  - 2) A sand filter designed and constructed in accordance with the requirements of Sections 905.70 or 905.80.
  - 3) A waste stabilization pond designed and constructed in accordance with the requirements of Section 905.90.
- c) Class I Effluent. Aerobic treatment plants listed by NSF for Class I effluent (BOD5-30 mg/l and Suspended Solids 30 mg/l) shall discharge to one of the following:
  - 1) A subsurface seepage field designed and constructed to be at least 2/3 the size determined necessary by Section 905.60.
  - 2) To a surface discharge in accordance with Section 905.110.
- d) Sizing. Aerobic treatment plants which are listed by NSF as Class I and rated at 500 gallons per day will be allowed for the treatment of sewage from residential property having up to and including 4 bedrooms. Other aerobic treatment plants that are listed by NSF as Class I shall be sized as follows:

Bedrooms	Minimum Rated Treatment Capacity-Gallons
1	400
2	400
3	500
4	500

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- the site for repairs.
- 4) Component parts: The mechanical and electrical component parts shall be guaranteed against any defects in materials and workmanship as warranted.
  - 5) Service: Service shall be available within 2 working days following a request.
  - 6) Owner's manual: An owner's manual shall be provided by the manufacturer with each unit. The manual shall include the following information:
    - A) Model numbers.
    - B) Functional description of unit including a statement of minimum performance requirements as established by test.
    - C) Design and flow diagrams.
    - D) Warranty.
    - E) Replacement policy and service policy.
    - F) Installation instructions.
    - G) Detailed operation and maintenance requirements (including user responsibility, parts and service).
    - H) Rated service flow in gpm (gallons per minute) or gpd (gallons per day).
    - I) Energy source and energy required for proper operation of the plant.
    - J) Specification of models tested under ANSI/NSF Standard 40.
  - 7) Service label: A clearly visible, permanently attached label or plate giving instructions for obtaining service shall be placed at the audible and visual alarm.
  - 8) Responsibility of property owner: The property owner shall be responsible for maintaining and operating the plant in accordance with this Part and the manufacturer's specifications.
- h) Operation. Aerobic treatment plants shall produce an effluent meeting the physical, chemical and biological requirements of Section 905.110. Under normal operation and in the event of an electrical or mechanical failure or other performance failure or malfunction, the design and construction of the aerobic treatment plant shall prevent the discharge of wastewater from any opening which is not part of the designed flow path of the entire treatment process and shall prevent the discharge of wastewater which is not in compliance with Section 905.110.
- i) Maintenance. In the event that a routine service call indicates an electrical, mechanical or performance failure or malfunction or if routine laboratory test results indicate improper treatment, the property owner shall immediately take action to bring the aerobic treatment plant into compliance with this Part.
  - j) Non-residential use. Aerobic treatment plants which are listed by NSF as Class I will be considered for use to serve a non-residential property provided all of the following are met:
    - 1) Total daily flows from the wastewater source into the plant are at least 75% of the rated hydraulic capacity and do not exceed

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- the rated hydraulic capacity of the plant.
- 2) Wastewater effluent shall not exceed the manufacturer's design specifications for BOD5 loading as established by NSF during testing of the plant.
  - 3) Hourly flows from the wastewater source into the plant are less than or equal to the treatment capacity of the plant divided by 24. This may require the installation of a flow equalization device.
  - 4) A buried sand filter sized with a surface area equal to 2 gallons per square foot per day and dosed at least once but not more than 4 times per day shall immediately follow the aerobic treatment plant.
  - k) Any wastewater source shall be served by a single individual aerobic treatment plant. Splitting of flows from a wastewater source or the use of multiple aerobic treatment plants shall be prohibited unless subsurface disposal of the effluent is used. Where allowed, splitting of flows shall be done by pumps.
  - 1) Private sewage disposal installation contractors or homeowners who maintain or service aerobic treatment plants shall be required to maintain the integrity of the NSF seal. Only component parts approved for use in an individual plant may be used. No design changes or component part changes may be made which will void the NSF seal. Any person who voids the NSF seal shall be responsible for repairing the plant so it can bear the NSF seal or shall replace the plant with an approved private sewage disposal system.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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1) Heading of the Part: Electronic Filing of Returns or Other Documents

2) Code Citation: 86 Ill. Adm. Code 760

<u>Section Numbers:</u>	<u>Proposed Action:</u>
760.100	New Section
760.110	New Section
760.120	New Section
760.200	New Section
760.210	New Section
760.220	New Section
760.230	New Section
760.240	New Section
760.300	New Section
760.310	New Section
760.320	New Section

4) Statutory Authority: 20 ILCS 2505/39c-1a

5) A Complete Description of the Subjects and Issues Involved: The proposed rules allow taxpayers to electronically file returns and other documents with the Department (other than those documents provided for in Part 150). The returns and other documents currently listed as being accepted are the Sales and Use Tax Returns ST-1 and ST-2. Amendments to the rules will be adopted as the Department develops the capability to accept other returns and documents in an electronic format.

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed rulemaking contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this notice to:

Terry Charlton  
Associate Counsel  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson

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Springfield, Illinois 62794  
Phone: (217) 782-6996

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: All small businesses or other entities that currently file Forms ST-1 or ST-2 with the Department will be affected by having the option to electronically file these returns with the Department. Other small businesses may be affected in the future as other returns and documents are added to the list as being accepted by the Department in an electronic format.

B) Reporting, bookkeeping or other procedures required for compliance: All participants that are transmitting directly to the Department and all software developers must successfully complete testing with the Department in order to be accepted into the electronic filing program.

C) Types of professional skills necessary for compliance: None

3) Regulatory Agenda on which this rulemaking was summarized: January 1998

The full text of the Proposed Rulemaking begins on the next page:



## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED RULEMAKING

TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE

## PART 760

## ELECTRONIC FILING OF RETURNS OR OTHER DOCUMENTS

Section  
760.100  
760.110  
760.120  
760.200  
760.210  
760.220  
760.230  
760.240  
760.300  
760.310  
760.320

Electronic Returns  
Exclusions from Electronic Filing  
Where to Send Electronic Returns  
Ways to Participate in Electronic Filing  
Application and Registration for Electronic Filing  
Electronic Payment Required  
Electronic Signatures  
Due Dates and Date Received  
Responsibilities of Electronic Filers  
Filing Acknowledgments  
Electronic Payment Acknowledgments

AUTHORITY: Implementing and authorized by Section 39c-1a of the Civil Administrative Code of Illinois [20 ILCS 2505/39c-1a].

SOURCE: Adopted at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 760.100 Electronic Returns

- a) The Department has created a voluntary electronic filing program under this Part for certain returns and other documents that are required to be filed with the Department. Upon acceptance into the program, the returns, attachments, and other documents listed in this Section may be electronically filed with the Department.
- b) An electronic return consists of data transmitted to the Department electronically, and may include paper documents that contain information which cannot be electronically transmitted or are requested for verification. In total, electronic returns must contain the same information as traditionally filed paper documents.
- c) The following forms and schedules can be transmitted electronically under the provisions of this Part:
  - 1) Form ST-1 Sales and Use Tax Return; and
  - 2) Form ST-2 Multiple Site attachment for Form ST-1.

## Section 760.110 Exclusions from Electronic Filing

The following types of returns and documents are excluded from electronic filing under this Part:

- a) Returns from individuals or organizations who have not been accepted

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as participants in the electronic filing program set forth in this Part;

- b) Returns requiring forms or schedules not listed in Section 760.100(c) of this Part;
- c) Any other return, form, or other document not listed in Section 760.100(c) of this Part; and
- d) Any return, form, or other document wherein electronic filing of those documents is provided for in Part 105, Electronic Filing of Illinois Individual Income Tax Returns.

## Section 760.120 Where to Send Electronic Returns

Electronic returns, attachments, forms, and any other electronic documents that are being electronically filed pursuant to this Part must be transmitted to the Department as follows:

- a) Participants transmitting directly to the Department must transmit to the communications processor at the Illinois Department of Revenue in Springfield, Illinois. The telephone number will be provided to accepted participants.
- b) Participants transmitting to the Department through the use of a value added network (VAN) must transmit to a VAN used by the Department, or to a VAN which has an interconnect with such a VAN.

## Section 760.200 Ways to Participate in Electronic Filing

Electronic filers can choose to perform all of the functions themselves that are associated with electronic filing, or they can choose to use the services of another accepted electronic filer (third party) to participate in the electronic filing program. For example:

- a) A participant can be a taxpayer who prepares the electronic return or other document and transmits it directly to the Department or a VAN using software developed by the taxpayer or a software provider.
- b) A participant can be a taxpayer who uses the services of a service group or other third party to prepare the electronic return or other document and transmit it to the Department or a VAN.
- c) A participant can be a third party transmitter who takes prepared returns from taxpayers or service groups and transmits them to the Department either directly or through the use of a VAN.
- d) A participant can be a service group or other third party who prepares electronic returns or other documents and transmits them to the Department either directly or through the use of a VAN.
- e) A participant can be a software developer who:
  - 1) develops software to format return information to conform with the Department specifications; and/or
  - 2) develops software to transmit to the Department either directly or through the use of a VAN.

## Section 760.210 Application and Registration for Electronic Filing

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- a) Application to participate in the electronic filing program provided for in this Part must be made by completing and signing Form EDI-1, Registration for Electronic Data Interchange. The Form EDI-1 must be mailed to the Department at the following address:

Electronic Filing  
Illinois Department of Revenue  
101 West Jefferson  
Springfield, IL 62702

- b) Participants are required to make return payments by electronic means for returns that are filed electronically with the Department. See Section 760.220 of this Part.
- c) Participants that are transmitting directly to the Department and software developers must successfully complete testing with the Department in order to be accepted into the electronic filing program.
- d) Taxpayers that use service groups or other third parties or agents to file returns or other documents electronically remain responsible for completing their own registration form. Service groups or other third parties or agents cannot complete or sign the registration on behalf of a taxpayer.
- e) Participants must submit a revised Form EDI-1 to the Department to update the information contained on their most current Form EDI-1 when there are changes involving:
- 1) the taxpayer's name, the firm name, or doing business as (DBA) name(s);
  - 2) any address, telephone or contact representative;
  - 3) Federal Employer's Identification Number (FEIN), Social Security Number (SSN), or Illinois Business Tax number (IBT);
  - 4) the electronic filing functions performed; or
  - 5) the taxpayer's signature code.
- f) The Department reserves the right to limit the number of participants in this electronic filing program.

## Section 760.220 Electronic Payment Required

- a) Taxpayers who electronically file returns and other documents with the Department under the provisions of this Part must make any required payments relating to those returns or documents through electronic means. The methods of electronic payment that can be utilized are as follows:
- 1) Electronic payment by electronic funds transfer under the Electronic Funds Transfer Program described in 86 Ill. Adm. Code 750;
  - 2) Electronic payment by including payment data as part of an EDI 813 Electronic Filing of Tax Return Data transaction set (see Section 760.320 of this Part); or
  - 3) Electronic payment by including payment data in an EDI 820

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Payment Order/Remittance Advice transaction set (see Section 760.320 of this Part).

- b) Regardless of the electronic payment method selected, taxpayers must complete and submit Form EFT-1, Authorization Agreement for Electronic Funds Transfer, as part of the EDI electronic filing registration process. This is required unless a participant is already enrolled to make payments in the Department's Electronic Funds Transfer Program for the returns or other documents listed in Section 760.100(c) of this Part. Form EFT-1 must be completed and submitted with the Form EDI-1 application for electronic filing.
- c) Taxpayers making electronic payments must initiate the transfer so that the amount due is deposited as collected funds to the Department's account on or before the due date under the appropriate tax Act. Taxpayers are reminded that the provisions of Section 1.25 of the Statute on Statutes [5 ILCS 70/1.25] do not apply to payments made by electronic means as those payments are not transmitted by mail.

## Section 760.230 Electronic Signatures

- a) Taxpayers must select their own signature code (personal identification code) on Form EDI-1, and the taxpayer or authorized officer or other individual responsible for filing the returns or other documents must properly sign the Form EDI-1.
- b) The taxpayer's signature code is to be used in lieu of a written signature when filing electronic returns, forms, or other documents with the Department.
- c) The effect of including a valid signature code as part of a transaction transmission has the same legal effect as the taxpayer having signed the returns or other documents that are in that transaction transmission.
- d) Electronically transmitted returns and other documents will be considered unsigned unless the taxpayer's registered signature code is included, and received by the Department, as part of that transaction transmission.
- e) A signature code is considered to be valid once it is registered by the Department until it expires or any of the following occurs:
- 1) The Department receives a written request from the taxpayer to have that taxpayer's signature code invalidated. To continue electronic filing under this Part, the taxpayer must submit a revised Form EDI-1 and select a new signature code.
  - 2) The taxpayer files a revised Form EDI-1 and has selected a new signature code on that form.
  - 3) The taxpayer notifies the Department that the signature code has been compromised. To continue electronic filing under this Part, the taxpayer must submit a revised Form EDI-1 and select a new signature code.
- f) For electronic returns and other documents authorized to be filed

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under Section 760.100(c) of this Part, a registered signature code is valid until the expiration of the corresponding certificate of registration or other certification issued by the Department to the taxpayer. The Department will notify the taxpayer at the time of expiration. At that time, the taxpayer must either reconfirm the signature code previously selected or select a new signature code. Upon the expiration of a signature code, any electronically transmitted return and other documents containing the expired code will be considered unsigned.

**Section 760.240 Due Dates and Date Received**

- a) When the statutory due date for filing a return and other document or making payment with the Department falls on a weekend or a banking holiday observed by the State of Illinois, the Department will accept the electronic return or other document and the payment on the next business day. Electronic filers are responsible for timely initiating the transaction to assure the return and other document is received by, and the payment made available to, the Department on the day following the weekend or banking holiday.
- b) When the statutory due date for filing or payment is the next day following a weekend or observed banking holiday, electronic filers are responsible for initiating the transaction prior to or on the last business day before the weekend or banking holiday, to assure the return and other document is received by, and the payment made available to, the Department by the due date.
- c) The receipt date of the electronic transmission will constitute the receipt date of the electronic return or other document if the transmission is acknowledged as accepted, or accepted with error, with a detailed acknowledgment from the Department as provided in Section 760.310. Any return acknowledged as rejected with a functional or detailed acknowledgment will be considered not filed.
  - 1) when the telephone transmission ends for participants transmitting directly to the Department; and
  - 2) when the transmission is deposited into the Department's electronic mailbox for participants that are using VANs.
- d) The receipt date for electronic payment will be the date the payment is actually deposited as collected funds to the Department's account.

**Section 760.300 Responsibilities of Electronic Filers**

- a) All electronic filers must comply with all of the requirements and specifications set forth in this Part, and in the Department's booklets EDI-2, Implementation Guide for Electronic Filing, and EDI-2-A, Procedures for Electronic Filing.
- b) Taxpayers filing electronically or using Electronic Data Interchange (EDI) must keep records equivalent to the level of detail contained in

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- c) Electronic filers are responsible for ensuring that electronic returns or other electronic documents and payments are filed with or paid to the Department in a timely manner as provided in Section 760.240 of this Part.
- d) Electronic filers are responsible for ensuring the security and confidentiality of all transmitted data until it has been received directly by the Department, or received by a VAN the Department is using.
- e) Electronic filers must not use software that has a Department assigned production password built into the software.
- f) Electronic filers cannot recall or intercept electronically filed returns or other documents after they have been acknowledged as accepted with a detailed acknowledgment from the Department. If the taxpayer wishes to amend any accepted electronically filed return, the corresponding paper amended return form must be filed with the Department.
- g) Electronic filers must make transmissions and retrieve acknowledgments in a timely manner. Acknowledgment files will normally be available from the Department within 24 hours after the transmission is received.
- h) Electronic filers must match acknowledgment files to the original transmission files. Returns acknowledged as accepted with a detailed acknowledgment from the Department as provided in Section 760.310 of this Part will be considered filed returns. Returns acknowledged as rejected must be corrected and retransmitted, if possible. Returns that cannot be retransmitted must be timely filed on the corresponding paper form.
- i) Electronic filers must immediately contact the Electronic Filing office if an acknowledgment has not been available after 36 hours from the transmission of the return.
- j) Electronic filers must contact the Electronic Filing office for assistance if returns have been rejected after three attempts, or if acknowledgments are received for returns that were not in the original transmissions.
- k) Taxpayers are responsible for retaining copies of all the acknowledgment files received from the Department or third party transmitters. These may be retained on magnetic media. Taxpayers must retain all copies of the acknowledgment files received from the Department for as long as the taxpayer would be required to keep tax records in a paper format.
  - 1) Electronic filers who provide transmission services to other electronic filers must:
    - 1) Accept electronic returns or other documents for direct or VAN transmission to the Department only from electronic filers accepted in this program;
    - 2) Provide each of their clients with the acknowledgment files for



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their transmissions within 24 hours after the availability of the acknowledgment from the Department; and

3) Retain copies of all acknowledgment files received from the Department for one year from the date of receipt. These may be retained on magnetic media.

m) Electronic filers who are software developers must:

- 1) Correct any software errors quickly to assure timely transmission of electronic returns or other documents;
- 2) Expeditiously distribute any corrections to all electronic filers utilizing the software; and
- 3) Not incorporate into its software a Department assigned production password.

## Section 760.310 Filing Acknowledgments

a) The Department will provide two different levels of acknowledgments for filing electronic returns and other electronic documents with the Department. The acknowledgments are referred to as the 997-Functional Acknowledgment and the 151-Electronic Filing of Tax Return Data Acknowledgment. These acknowledgments are based upon transaction sets developed and approved for Electronic Data Interchange (EDI) by the American National Standards Institute's Accredited Standards Committee X12.

b) The first level of acknowledgment is the 997-Functional Acknowledgment. This acknowledgment determines whether the electronic transmission contains any syntax errors at any level.

1) If the 997 acknowledgment designates rejection, the entire transmission is rejected and all the transaction sets (electronic documents and payment data) contained in the transmission are considered not filed.

2) If the 997 acknowledgment designates acceptance, this is only evidence that the Department received a transmission from the sender. The 997 acknowledgment is not a detailed acknowledgment of the electronic documents contained in the transmission. Receipt of a 997 designating acceptance does not mean that included transaction sets (electronic documents or payment data) are accepted for processing or that they are considered filed.

3) If the 997 acknowledgment designates acceptance, the individual transaction sets (electronic documents and payment data) may still be rejected later in the processing of the transmission. Note: Only a 151 acknowledgment (described below) designating acceptance will mean the transaction sets are considered filed and will be processed.

c) The second level of acknowledgment is the 151-Electronic Filing of Tax Return Data Acknowledgment. If the 997 acknowledgment designates acceptance, a 151 acknowledgment will be provided for each 813-Electronic Filing of Tax Return Data transaction set contained in that transmission. The 151 acknowledgment is a detailed

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acknowledgment of the electronic return or document included in that 813 transaction set.

1) If the 151-Electronic Filing of Tax Return Data Acknowledgment designates an 813-Electronic Filing of Tax Return Data transaction set is rejected, the electronic return or document represented by that 813 transaction set is considered not filed, and any payment authorization included will not be processed.

2) If the 151-Electronic Filing of Tax Return Data Acknowledgment designates an 813-Electronic Filing of Tax Return Data transaction set is accepted, the electronic return or document represented by that 813 transaction set will be considered filed.

3) If the 151-Electronic Filing of Tax Return Data Acknowledgment designates an 813-Electronic Filing of Tax Return Data transaction set is accepted, and that 813 also includes a payment authorization, the presence of a confirmation number in the 151 will indicate that the payment authorization has also been accepted for processing. If the 151 does not contain a confirmation number, it means the payment authorization will not be processed, although the electronic return or other document has been accepted.

## Section 760.320 Electronic Payment Acknowledgments

a) This Section does not apply to electronic payments by electronic funds transfer under the Electronic Funds Transfer Program described in 86 Ill. Adm. Code 750.

b) The Department will provide two different levels of acknowledgments for electronic payments. The first level of acknowledgment is the 997-Functional Acknowledgment. The second level of acknowledgment is either the 151-Electronic Filing of Tax Return Data Acknowledgment (for electronic payment data included in an 813 transaction set) or the 824-Application Advice (for detailed acknowledgment of each 820-Payment Order/Remittance Advice transaction set). These acknowledgments are based upon transaction sets developed and approved for Electronic Data Interchange (EDI) by the American National Standards Institute's Accredited Standards Committee X12.

c) The first level of acknowledgment is the 997-Functional Acknowledgment. This acknowledgment determines whether the electronic transmission contains any syntax errors at any level.

1) If the 997 acknowledgment designates rejection, the entire transmission is rejected and all the transaction sets (electronic documents and payment information) contained in the transmission are considered not received.

2) If the 997 acknowledgment designates acceptance, this is only evidence that the Department received a transmission from the sender. The 997 acknowledgment is not a detailed acknowledgment of the electronic documents or payment information contained in the transmission. Receipt of a 997 designating acceptance does

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not mean that included transaction sets (electronic documents or payment data) are accepted for processing or that they are considered filed or received.

- d) The second level of acknowledgment is dependent upon whether the taxpayer has chosen to include the electronic payment data as part of the 813-Electronic Filing of Tax Return Data transaction set or has chosen to send the payment data in a separate transaction as an 820-Payment Order/Remittance Advice transaction set.

- e) For taxpayers that have chosen to include the electronic payment data as part of the 813-Electronic Filing of Tax Return Data transaction set and have had the 997 acknowledgment designate acceptance, a 151 acknowledgment will be provided for each 813 transaction set contained in that transmission. The 151 acknowledgment is a detailed acknowledgment of the electronic return and payment data included in that 813 transaction set.

- 1) If the 151-Electronic Filing of Tax Return Data Acknowledgment designates an 813-Electronic Filing of Tax Return Data transaction set is rejected, the electronic return and payment data represented by that 813 transaction set is considered not received.

- 2) If the 151-Electronic Filing of Tax Return Data Acknowledgment designates an 813-Electronic Filing of Tax Return Data transaction set is accepted, and the 151 also contains a confirmation number, the electronic return and payment data represented by that 813 transaction set will be considered received, and will be processed. If the 151 does not contain a confirmation number, it means the payment authorization will not be processed, although the electronic return or other document has been accepted.

- f) For taxpayers that have chosen to send the payment data in a separate transaction as an 820-Payment Order/Remittance Advice transaction set and have had the 997 acknowledgment designate acceptance, an 824-Application Advice acknowledgment will be provided for each 820 transaction set contained in that transmission. The 824 acknowledgment is a detailed acknowledgment of the payment data included in that 820 transaction set.

- g) The 820-Payment Order/Remittance Advice transaction set may include one or multiple payment authorizations. The 824-Application Advice acknowledgment may accept or reject an entire 820 transaction set, or any specific debit authorization(s) included in the 820 transaction set.

- 1) If the 824-Application Advice acknowledgment designates the entire 820-Payment Order/Remittance Advice transaction set is rejected, all electronic payment data represented by that 820 transaction set is considered not received. If there are multiple payment authorizations included in the 820 transaction set, none of the payment authorizations will be processed.

- 2) If the 824-Application Advice acknowledgment designates the

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entire 820-Payment Order/Remittance Advice transaction set is accepted, it does not mean that the payment authorization(s) included will be processed. The 824 acknowledgment may still reject any specific payment authorization(s) included in the 820 transaction set. If there are multiple payment authorizations, all may be rejected, all may be accepted, or some may be accepted and some may be rejected.

- 3) If the 824-Application Advice acknowledgment designates the entire 820-Payment Order/Remittance Advice transaction set is accepted, the presence of a confirmation number for a specific payment authorization will indicate that the authorization will be processed by the Department. If there is no confirmation number for a specific payment authorization, it means that the authorization will not be processed.

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## NOTICE OF PROPOSED AMENDMENT(S)

1) Heading of the Part: Dealers, Wreckers, Transporters and Rebuilders

2) Code Citation: 92 Ill. Adm. Code 1020

3) Section Number  
1020.80 Proposed Action  
New Section

4) Statutory Authority: Implementing Chapter 5, and authorized by Section 2-104(b), of the Illinois Vehicle Title and Registration Law of the Illinois Vehicle Code [625 ILCS 5/Ch. 5 and 2-104(b)].

5) A Complete Description of the Subjects and Issues Involved: Clarifies existing procedures with respect to issuing title for a rebuilt vehicle. This rulemaking codifies current procedures regarding the inspection of rebuilt vehicles by the Secretary of State Police.

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporation by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking. Written comments may be submitted within 45 days to:

Carol Sudman, Assistant Counsel  
298 Howlett Building  
Springfield, Illinois 62756  
217/785-3094

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: This rulemaking will only affect licensed rebuilders.

B) Report, bookkeeping or other procedures required for compliance: No additional reporting requirements are imposed.

C) Types of professional skills necessary for compliance: No professional skills are relevant to this rulemaking.

13) Regulatory Agenda in which this rulemaking was Summarized: This

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rulemaking was not included on either of the 2 most recent agendas because: Not anticipated.

The full text of the Proposed Amendments is as follows:



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TITLE 92: TRANSPORTATION  
CHAPTER II: SECRETARY OF STATE  
PART 1020  
DEALERS, WRECKERS, TRANSPORTERS AND REBUILDERS

TITLE 92: TRANSPORTATION  
CHAPTER II: SECRETARY OF STATE  
PART 1020  
DEALERS, WRECKERS, TRANSPORTERS AND REBUILDERS

Dealers Established Place of Business  
Required Records for Automotive Parts Recyclers Rebuilders, New Vehicle Dealers, Used Vehicle Dealers, Repairers and Out-of-State Salvage Vehicle Buyers  
1020.30 Identification Number Plate Attached  
1020.40 Inspection of Licensees' Records and Premises  
1020.50 Consignment Sales by Dealers  
1020.70 Rebuilders Not to Engage in Retail Selling of Salvage or Rebuilt Vehicles  
1020.80 Inspection of Rebuilt Vehicles

Dealers Established Place of Business  
Required Records for Automotive Parts Recyclers Rebuilders, New Vehicle Dealers, Used Vehicle Dealers, Repairers and Out-of-State Salvage Vehicle Buyers  
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1020.70 Rebuilders Not to Engage in Retail Selling of Salvage or Rebuilt Vehicles  
1020.80 Inspection of Rebuilt Vehicles

AUTHORITY: Implementing Chapter 5 and authorized by Section 2-104(b) of the Illinois Vehicle Title and Registration Law of the Illinois Vehicle Code [625 ILCS 5/Ch. 5 and 2-104(b)].

AUTHORITY: Filed March 5, 1975; amended at 2 Ill. Reg. 33, p. 144, effective August 8, 1978; amended at 5 Ill. Reg. 3835, effective March 27, 1981; codified at 6 Ill. Reg. 12674; amended at 7 Ill. Reg. 5260, effective April 4, 1983; amended at 8 Ill. Reg. 14657, effective August 1, 1984; amended at 8 Ill. Reg. 22884, effective November 16, 1984; amended at 12 Ill. Reg. 13612, effective August 15, 1988; amended at 12 Ill. Reg. 17962, effective November 1, 1988; amended at 14 Ill. Reg. 8704, effective June 1, 1990; amended at 19 Ill. Reg. 11640, effective August 1, 1995; amended at 20 Ill. Reg. 11356, effective August 1, 1996; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SOURCE: Filed March 5, 1975; amended at 2 Ill. Reg. 33, p. 144, effective August 8, 1978; amended at 5 Ill. Reg. 3835, effective March 27, 1981; codified at 6 Ill. Reg. 12674; amended at 7 Ill. Reg. 5260, effective April 4, 1983; amended at 8 Ill. Reg. 14657, effective August 1, 1984; amended at 8 Ill. Reg. 22884, effective November 16, 1984; amended at 12 Ill. Reg. 13612, effective August 15, 1988; amended at 12 Ill. Reg. 17962, effective November 1, 1988; amended at 14 Ill. Reg. 8704, effective June 1, 1990; amended at 19 Ill. Reg. 11640, effective August 1, 1995; amended at 20 Ill. Reg. 11356, effective August 1, 1996; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SOURCE: Filed March 5, 1975; amended at 2 Ill. Reg. 33, p. 144, effective August 8, 1978; amended at 5 Ill. Reg. 3835, effective March 27, 1981; codified at 6 Ill. Reg. 12674; amended at 7 Ill. Reg. 5260, effective April 4, 1983; amended at 8 Ill. Reg. 14657, effective August 1, 1984; amended at 8 Ill. Reg. 22884, effective November 16, 1984; amended at 12 Ill. Reg. 13612, effective August 15, 1988; amended at 12 Ill. Reg. 17962, effective November 1, 1988; amended at 14 Ill. Reg. 8704, effective June 1, 1990; amended at 19 Ill. Reg. 11640, effective August 1, 1995; amended at 20 Ill. Reg. 11356, effective August 1, 1996; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

Section 1020.80 Inspection of Rebuilt Vehicles

Section 1020.80 Inspection of Rebuilt Vehicles

- a) Persons requesting an appointment with the Secretary of State Department of Police for the inspection of a rebuilt salvage vehicle will be given the name and address of the nearest safety lanes.
- b) In addition to the requirements of Sections 3-303 and 3-304 of the Illinois Vehicle Code, the following documents shall be submitted:
  - 1) A properly assigned Illinois Salvage Certificate, a foreign salvage title/certificate capable of being registered in Illinois, or a letter from the Administrator of the Secretary of State Vehicle Title Division authorizing the inspection of non-licensed applicants.
  - 2) A completed title application for a rebuilt vehicle with the licensed rebuilder's name exactly as it appears on the

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- b) In addition to the requirements of Sections 3-303 and 3-304 of the Illinois Vehicle Code, the following documents shall be submitted:
  - 1) A properly assigned Illinois Salvage Certificate, a foreign salvage title/certificate capable of being registered in Illinois, or a letter from the Administrator of the Secretary of State Vehicle Title Division authorizing the inspection of non-licensed applicants.
  - 2) A completed title application for a rebuilt vehicle with the licensed rebuilder's name exactly as it appears on the

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certificate of authority.  
3) Affirmation form RT-11.13 (or any subsequent form issued by the Secretary of State which fulfills the same purpose) completed with the name exactly as it appears on the certificate of authority. The affirmation shall include:

- A) A list of all used essential parts identified by vehicle identification number and from whom the parts were acquired;
- B) A list of all new parts identified by bill of sale; and
- C) The signature of the applicant and/or the licensed rebuilder.

certificate of authority.  
3) Affirmation form RT-11.13 (or any subsequent form issued by the Secretary of State which fulfills the same purpose) completed with the name exactly as it appears on the certificate of authority. The affirmation shall include:

- A) A list of all used essential parts identified by vehicle identification number and from whom the parts were acquired;
- B) A list of all new parts identified by bill of sale; and
- C) The signature of the applicant and/or the licensed rebuilder.

4) Proof of Ownership documents of essential parts, including, but not limited to:

- A) invoices, bills of sale, Uniform Invoice for Essential Parts forms (rebuilders may duplicate forms provided by the Secretary of State), junking certificates or other ownership documents which are noted with the year, make, and vehicle identification number on the documents for all used essential parts;
- B) invoices for new essential parts which were used in the rebuilding of the salvage vehicle; and
- C) a copy of the work order for the reclaimable part and the receipt for the replacement part which was installed on the vehicle described on the work order. For purposes of this Section, a "reclaimable" part is a damaged part which has been removed from a vehicle undergoing repair by a licensee which can be re-used, repaired for re-use or salvaged, e.g., fender that was removed and repaired or salvaged, then installed on a rebuilt vehicle.

4) Proof of Ownership documents of essential parts, including, but not limited to:

- A) invoices, bills of sale, Uniform Invoice for Essential Parts forms (rebuilders may duplicate forms provided by the Secretary of State), junking certificates or other ownership documents which are noted with the year, make, and vehicle identification number on the documents for all used essential parts;
- B) invoices for new essential parts which were used in the rebuilding of the salvage vehicle; and
- C) a copy of the work order for the reclaimable part and the receipt for the replacement part which was installed on the vehicle described on the work order. For purposes of this Section, a "reclaimable" part is a damaged part which has been removed from a vehicle undergoing repair by a licensee which can be re-used, repaired for re-use or salvaged, e.g., fender that was removed and repaired or salvaged, then installed on a rebuilt vehicle.

c) The person bringing the vehicle to the inspection station shall be required to:

- 1) show proof of a valid Illinois registration for the vehicle (dealer plates or a 72 hour permit);
- 2) display a valid driver's license to the SVIS Investigator who will check through LEADS/NCIC/CRT to verify its validity. If suspended or revoked, the licensee will be required to provide a driver with a valid license;
- 3) open the trunk or hood, as required, to provide accessibility to identification numbers; and
- 4) leave the inspection area during the physical inspection of the vehicle.

c) The person bringing the vehicle to the inspection station shall be required to:

- 1) show proof of a valid Illinois registration for the vehicle (dealer plates or a 72 hour permit);
- 2) display a valid driver's license to the SVIS Investigator who will check through LEADS/NCIC/CRT to verify its validity. If suspended or revoked, the licensee will be required to provide a driver with a valid license;
- 3) open the trunk or hood, as required, to provide accessibility to identification numbers; and
- 4) leave the inspection area during the physical inspection of the vehicle.

- d) A request for the inspection of a salvage vehicle will be denied if:
  - 1) there is improper documentation for the essential parts;
  - 2) there is incorrect documentation for the essential parts; documents are missing;
  - 3) the documents are illegible;
  - 4) the vehicle is missing essential parts;
  - 5) the vehicle is rebuilt using damaged parts;
  - 6) the vehicle is incomplete; or

- d) A request for the inspection of a salvage vehicle will be denied if:
  - 1) there is improper documentation for the essential parts;
  - 2) there is incorrect documentation for the essential parts; documents are missing;
  - 3) the documents are illegible;
  - 4) the vehicle is missing essential parts;
  - 5) the vehicle is rebuilt using damaged parts;
  - 6) the vehicle is incomplete; or

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8) the rebuilder is not properly licensed or does not have a letter from the Administrator of the Secretary of State Vehicle Title Division.

e) A vehicle may fail an inspection if:

1) insufficient or incorrect documentation is discovered after the inspection is started and the problem cannot readily be corrected;

2) the identification numbers are ground, defaced, mutilated, restamped or removed;

3) contraband or stolen essential parts are installed on the vehicle. The vehicle may be held pending further investigation;

4) a junking or salvage certificate is not properly assigned to the seller for all essential parts purchased from a rebuilder licensed in Illinois; or

5) a reclaimable part is not accompanied by the proper documentation.

f) A fee of \$75 will be charged for each inspection started or completed. The fee will be returned if the request for an inspection is denied and the physical inspection has not started.

g) All Salvage Vehicle Inspection Reports must be signed by the on-site Secretary of State Auto Body Specialist and approved by the Secretary of State investigator in charge of the station.

h) No vehicle shall be inspected without an appointment unless there is express approval of the investigator in charge of the station.

(Source: Added at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

## NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: The Administration and Operation of the State Employees' Retirement System of Illinois

2) Code Citation: 80 Ill. Adm. Code 1540

3) Section Numbers: Proposed Action:  
1540.90 Amendment

4) Statutory Authority: 40 ILCS 5/14-135.03

5) A Complete Description of the Subjects and Issues Involved: On February 4, 1998, the Appellate Court of Illinois, Fifth District, in Young v. Mory (Fifth District Appellate Court No. 5-97-0089) issued an opinion in support of Young's contention that the State Employees' Retirement System cannot offset attorney's fees paid in a Workers' Compensation case based on the common fund doctrine, which states in part, that, "an attorney who performs services in creating a fund should, in equity and good conscience, be allowed compensation out of the whole fund from all those who seek to benefit from it."

Based on this decision, the wording changes to Section 1540.90(a)(5) and (b)(1) are being proposed to allow for the reduction of offset for legal expenses granted.

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments should be submitted in writing within 45 days after the proposed rules are published in the Illinois Register and should be directed to:

Michael L. Mory, Executive Secretary  
State Employees' Retirement System of Illinois  
P.O. Box 19255 - 2101 South Veterans Parkway  
Springfield, Illinois 62794-9255  
Telephone: (217)785-7444

12) Initial Regulatory Flexibility Analysis:

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

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- A) Types of small businesses, small municipalities and not for provide corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda which this rulemaking was summarized: This rulemaking was not included on either of the two most recent regulatory agendas because: This amendment was filed in response to a recent court decision. The full text of the Proposed Amendments begins on the next page.

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

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TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES  
SUBTITLE D: RETIREMENT SYSTEMS  
CHAPTER I: STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

PART 1540

THE ADMINISTRATION AND OPERATION OF THE

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

Section	Introduction
1540.5	Appointment of Retirement System Coordinator
1540.10	Member's Contribution and Service Credit
1540.20	Determination of Rate of Compensation
1540.30	Prior Service Credit
1540.40	Credit for Service for Which Contributions are Permitted
1540.50	Severance of Employment - A Condition to the Payment of a Refund or Retirement Annuity
1540.60	Death Benefits
1540.70	Disability Claims
1540.80	Benefit Offset
1540.90	Birth Date Verification
1540.100	Marriage Verification
1540.110	Level Income Option
1540.120	Pension Credit for Unused Sick Leave
1540.130	Removal of Children from Care of Surviving Spouse
1540.140	Proof of Dependency
1540.150	Investigations of Benefit Recipients
1540.160	Interest on Member Contributions
1540.170	Date of Application - Retirement Annuity, Occupational and Nonoccupational and Temporary Disability Benefits, and Resignation Refund Payments
1540.180	Lump Sum Salary Payments
1540.190	Removal From the Payroll
1540.200	Latest Date of Membership
1540.210	Period for Payment and Amount of Payment of Contributions
1540.220	Contributions By the State (Repealed)
1540.230	Actuarially Funded Basis (Repealed)
1540.240	Payments to Establish Credit for Service for Which Contributions are Permitted
1540.250	Pick-up Option for Optional Service Contributions
1540.255	Contributions and Service Credit During Nonwork Periods
1540.260	Written Appeals and Hearings
1540.270	Availability for Public Inspection (Recodified)
1540.280	Procedure for Submission, Consideration and Disposition of Petitions
1540.290	Seeking the Promulgation, Amendment or Repeal of these Rules and Regulations (Recodified)
1540.300	Organization of the State Employees' Retirement System (Recodified)
1540.310	Amendments



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- 1540.320 Optional Forms of Benefits - Basis of Computation  
 1540.330 Board Elections  
 1540.340 Excess Benefit Arrangement  
 TABLE A Optional Forms of Benefits - Basis of Computation

AUTHORITY: Implementing and authorized by Article 14 of the Illinois Pension Code [40 ILCS 5/Art. 14].

SOURCE: Filed December 20, 1977, effective December 31, 1977; filed and effective February 28, 1978; emergency rule at 4 Ill. Reg. 2, page 246, effective January 1, 1980; amended at 4 Ill. Reg. 12, pages 530, 532, 534, effective March 11, 1980; emergency rule at 4 Ill. Reg. 46, page 1300, effective November 1, 1980; amended at 5 Ill. Reg. 3454, effective March 19, 1981; amended at 5 Ill. Reg. 7225, effective July 1, 1981; amended at 5 Ill. Reg. 12846, effective October 30, 1981; amended at 6 Ill. Reg. 2114, effective January 29, 1982; amended at 6 Ill. Reg. 5505, effective April 16, 1982; codified at 6 Ill. Reg. 10935; emergency amendment at 6 Ill. Reg. 11084, effective August 31, 1982, for a maximum of 150 days; amended at 7 Ill. Reg. 677, effective December 30, 1982; amended at 7 Ill. Reg. 8831, effective July 15, 1983; emergency amendment at 8 Ill. Reg. 359, effective January 1, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 4144, effective March 26, 1984; Sections 1540.280, 1540.290 and 1540.300 recodified to 2 Ill. Adm. Code 2375 at 8 Ill. Reg. 15902; amended at 9 Ill. Reg. 12375, effective July 30, 1985; emergency amendment at 9 Ill. Reg. 19752, effective December 5, 1985, for a maximum of 150 days; amended at 10 Ill. Reg. 8809, effective May 14, 1986; amended at 11 Ill. Reg. 11155, effective June 15, 1987; amended at 14 Ill. Reg. 10498, effective June 19, 1990; amended at 15 Ill. Reg. 7379, effective April 26, 1991; amended at 16 Ill. Reg. 14407, effective September 4, 1992; amended at 20 Ill. Reg. 8033, effective June 15, 1996; emergency amendment at 21 Ill. Reg. 476, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 4992, effective April 1, 1997; emergency amendment at 21 Ill. Reg. 13187, effective September 15, 1997, for a maximum of 150 days; amendment at 22 Ill. Reg. 967, effective December 22, 1997; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

Section 1540.90 Benefit Offset

- a) Occupational Disability and Occupational Death  
 Benefits received under Workers' Compensation Act [820 ILCS 305] (44-Rev-Stat--1991-eh-48, par--138-1-et-seq-7-as-amended) or Workers' Occupational Diseases Act [820 ILCS 310] (44-Rev-Stat--1991-eh-48-par-138-1-et-seq-7-as-amended) with respect to disability or death of a member shall be applied as an offset against any occupational disability or death benefit provided under the Retirement System with respect to the same disability or death. The Workers' Compensation weekly rate will be converted to a monthly rate for use as an offset to the Retirement System monthly benefit.  
 1) If the amount of compensation received is less than the monthly

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benefit provided under the Pension Code Retirement Act, only the amount of the excess of such monthly benefit over the amount of such compensation shall be payable by the Retirement System, subject, in the case of occupational death, to any minimum benefit provided by Section 14-103.18 and Section 14-121(h) of the Pension Code Retirement Act. If the amount of compensation received equals or exceeds the monthly benefit provided under the Pension Code Retirement Act, no benefit shall be payable by the Retirement System during the period compensation is paid under the Workers' Compensation Act or Workers' Occupational Diseases Act.

- 2) If the compensation for disability or death is received in a commuted lump sum or partly in a commuted lump sum and partly in monthly or weekly sums, the Retirement System shall, for offset purposes, consider the compensation as if it had been paid at a weekly rate as prescribed under the Workers' Compensation Act or Workers' Occupational Diseases Act. Salary or wages paid beyond date of disability shall not be considered part of the Workers' Compensation offset.  
 3) In the event the whole or any part of the benefits received under the Workers' Compensation Act or Workers' Occupational Diseases Act is commuted into one sum, the aggregate sum of the benefits so commuted and not the commuted value thereof shall be used for purposes of ascertaining the amount of offset.  
 4) No such offset or compensation shall be made after retirement of a member of a retirement annuity.  
 5) The amount considered for offset purposes shall not be reduced by any legal expenses granted in from the award to the member.  
 6) No offset shall be made with respect to amounts received or paid under the Workers' Compensation Act or Workers' Occupational Diseases Act for medical, hospital, or burial expenses.  
 7) That portion of the occupational death benefit consisting of accumulated contributions of a member shall not be subject to any offset mentioned in this section.  
 8) The termination of death benefits under the Workers' Compensation Act or Workers' Occupational Diseases Act due to remarriage of the benefit recipient shall cause the offset to the Occupational Death Benefit applicable to the remarried benefit recipient to terminate effective with the last month of eligibility represented in the final benefit payment under the Workers' Compensation Act or Workers' Occupational Diseases Act.  
 9) In those cases where the injury or death, for which an occupational disability or death benefit is payable, creates a legal liability for damages on the part of some person other than the employer to pay damages, the Workers' Compensation offset shall be applied as follows:  
 A) Any amounts paid under the Workers' Compensation Act or Workers' Occupational Diseases Act are subject to the offset

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[illegible]

B) In the event that benefits due under the Workers' Compensation Act or Workers' Occupational Diseases Act are commuted into one sum or waived in lieu of the member seeking recovery against a third party, the System shall use the amount of any judgment, settlement or payment for such injury by the third party as a credit against any benefits paid or payable by the System.

10.0) Any period(s) of disability for which payment under the Workers' Compensation Act is denied due to the failure of the individual to comply with that Act which result in a period(s) of noncompensability under the Workers' Compensation Act will not be considered for Occupational Disability until the entire Workers' Compensation case has been finalized through the Illinois Industrial Commission.

b) Nonoccupational Disability and Temporary Disability

11) The nonoccupational and temporary disability benefit payable to a covered member shall be offset before age 65 by the amount of Social Security disability benefit payable prior to the member attaining age 65 and after age 65 by the amount of the Social Security retirement benefit for which the individual is first eligible on or after attaining age 65 less leial expenses paid by the member to obtain the award up to the maximum allowed by the Social Security Administration.

22) The Social Security retirement benefit offset will be applied as follows at age 65:

A) For a disability benefit recipient who received Social Security disability benefits before age 65, the Social Security disability benefit payment applied as the offset prior to age 65 will remain in effect as the Social Security retirement benefit offset on or after age 65.

B) For a disability benefit recipient who did not receive Social Security disability benefits before age 65, the Social Security disability benefit amount that would have been payable by the Social Security Administration had the disability benefit recipient been disabled for the purpose of Social Security will be used as the Social Security retirement benefit offset at age 65 regardless of acceptance of a Social Security retirement benefit before age 65.

C) When a Social Security disability benefit amount is not provided by the Social Security Administration because the individual is not eligible for a disability benefit for a reason other than not being disabled, the Social Security

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retirement benefit determined at the date of disability for which the individual is eligible at age 65 will be used for offset purposes at age 65.

3) Disability benefits commencing after age 65 will be offset by Social Security retirement benefits for which the individual is eligible on the commencement of disability.

c) Widows and Survivors Annuities

11) When a monthly widows or survivors annuity is approved on account of a covered employee, the annuity shall be reduced by one-half of any Social Security survivors benefits for which all beneficiaries included in the widows or survivors annuity are eligible. The offset shall not reduce any survivor or widows benefit by more than 50 percent.

2) The reduction will commence on the date the beneficiaries first become eligible to receive any portion of the Social Security benefit regardless of whether the beneficiaries elect to accept the Social Security benefit on that date, or if the beneficiaries' own earnings preclude payment of Social Security survivors benefits.

3) If at the time the offset is to be commenced: the survivor is eligible to receive a monthly benefit amount based on his/her own Primary Insurance Amount such amount shall be deducted from the amount of survivors benefit payable by Social Security and the offset computed on the difference; the survivor is eligible to receive a monthly benefit amount based on his/her own Primary Insurance Amount and a governmental pension offset would have been applied to the Social Security survivors benefit, such amount shall be deducted from the amount of the survivors benefit payable by Social Security and the offset computed on the difference.

4) The Social Security reduction amount once established shall remain constant except for the following conditions:

A) If a survivor under age 50 previously receiving the survivors benefit because of minor children becomes a deferred annuitant then the offset amount will be recomputed when he or she first becomes eligible for Social Security survivors benefits. The offset amount will be based on the original widow's Social Security survivors amount ignoring subsequent increases to the deceased's Primary Insurance Amount. The recomputed offset amount shall be the balance of the Social Security survivors benefit minus the governmental pension offset, if any.

B) The offset amount will be adjusted when a child is removed from consideration for the System's annuity.

C) The offset amount will be adjusted when any benefit recipient(s) become ineligible for Social Security benefits.

D) For deaths on or after the effective date of this Section change, if a survivor under age 62 previously receiving the

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survivor benefit becomes eligible to receive a monthly benefit amount based on a Primary Insurance Amount on his or her own record, then the offset will be recomputed when (s)he first becomes eligible to receive his or her own Primary Insurance Amount. The offset amount will be based on the estimated widow(er)'s Social Security survivors amount determined at the date of death of the member less the estimated monthly benefit amount based on the Primary Insurance Amount of the survivor determined at the date of death of member, and the government pension offset, if any, ignoring any subsequent increases to the deceased Primary Insurance Amount or the Survivors Primary Insurance Amount. The monthly benefit amount based on the primary insurance amount of the survivor shall be determined from the Social Security Administrations' Personal Earnings and Benefit Estimate Statement including any adjustment due to the application of the Windfall Elimination Provision.

- d) Retirement Annuity Pursuant to Section 14-108(f) of the Pension Code Retirement-Act, for members under age 65, the primary insurance benefit payable to the member upon attainment of age 65 shall, at the date of acceptance of a retirement annuity, be determined from the Social Security Administrations' Personal Earnings and Benefit Estimate Statement, including any adjustments due to the application of the Windfall Elimination Provision. For members over age 65, the primary insurance benefit shall be the amount of social security benefits payable at the date of retirement with the State Employees' Retirement System.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- 1) Heading of the Part: Tourist Oriented Directional Signing Program
- 2) Code Citation: 92 Ill. Adm. Code 541
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
541.10	New Section
541.20	New Section
541.30	New Section
541.40	New Section
541.50	New Section
541.60	New Section
541. Illustration A	New Section
- 4) Statutory Authority: Implementing Section 4.08 of the Highway Advertising Control Act of 1971 [225 ILCS 440/4.08] and Section 49.30 of the Civil Administrative Code [20 ILCS 2705/49.30], and authorized by Section 4-201.1 of the Illinois Highway Code [605 ILCS 5/4-201.1] and Section 14.01 of the Highway Advertising Control Act of 1971 [225 ILCS 440/14.01].
- 5) A complete description of the subjects and issues involved: This Part establishes provisions for the use of Tourist Oriented Directional Signs (TODS) along State-maintained non-freeways as authorized by Section 4.08 of the Highway Advertising Control Act of 1971 [225 ILCS 440/4.08] and Section 49.30 of the Civil Administrative Code [20 ILCS 2705/49.30]. This Part allows the Department to install signs, for a fee, at rural non-freeway intersections to direct motorists to businesses which derive the major portion of their income from visitors or tourists not residing in the immediate vicinity of the business.  
  
These signs, referred to as Tourist Oriented Directional Signs, or TODS, will provide motorists with travel related directional information to facilities offering gas, food, lodging and camping. Any business that meets the established criteria set forth in this Part may elect to pay the application fee to have a sign with its business name, the days and months of operation, where applicable, and the mileage to the business placed upon its sign.  
  
This program will begin 45 days after the adoption of the rule and will apply to conventional roads in rural areas. The Department will be utilizing the Federal Manual on Uniform Traffic Control Devices for standards regarding specifications and locations of signs.
- 6) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed rule contain incorporations by reference? No



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TITLE 92: TRANSPORTATION  
CHAPTER I: DEPARTMENT OF TRANSPORTATION  
SUBCHAPTER f: HIGHWAYS

PART 541  
TOURIST ORIENTED DIRECTIONAL SIGNING PROGRAM

Section

- 541.10 Introduction
  - 541.20 Definitions
  - 541.30 Tourist Oriented Directional Signs
  - 541.40 Business Signs
  - 541.50 Sign Design
  - 541.60 Application, Fees, and Other Regulations
- ILLUSTRATION A District Boundary Map

AUTHORITY: Implementing Section 4.08 of the Highway Advertising Control Act of 1971 [225 ILCS 440/4.08] and Section 49.30 of the Civil Administrative Code [20 ILCS 2705/49.30], and authorized by Section 4-201.1 of the Illinois Highway Code [605 ILCS 5/4-201.1] and Section 14.01 of the Highway Advertising Control Act of 1971 [225 ILCS 440/14.01].

SOURCE: Adopted at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_,

Section 541.10 Introduction

- a) This Part has been developed to regulate the use of Tourist Oriented Directional Signs (TODS) displayed along various State-maintained non-freeways. It establishes standards, specifications, and financial responsibility for a TODS program providing motorists with travel related directional information to facilities of interest to tourism.
- b) This program applies to non-freeways within the State of Illinois that are under the jurisdiction of the Department of Transportation (the Department) and that are outside of urban areas.

Section 541.20 Definitions

The following words or phrases when used in this Part shall have the meanings ascribed to them below.

"Business" - an open establishment available to the general public which is oriented toward tourism and the major portion of whose income or visitors are derived during the normal business season from motorists not residing within 25 air miles of such business.

"Business Sign" - a rectangular sign consisting of a business name,

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- 9) Are there any other amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: TODS signs are allowed in local municipalities of fewer than 2,500 people, with the municipality's permission, at no cost to the local municipality.

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested party may submit written comments or arguments concerning this proposed rule. Written submissions shall be filed with:

Joseph Hill, Chief Engineer  
Bureau of Operations, Room 009  
Illinois Department of Transportation  
Division of Highways  
Springfield IL 62764  
(217) 782-7231

JCAR requests, comments and concerns regarding this rulemaking should be addressed to:

Christine Caronna-Beard, Rules Manager  
Illinois Department of Transportation  
2300 South Dirksen Parkway, Room 300  
Springfield IL 62764  
(217)782-3215

Comments received within 45 days after the date of publication of this Illinois Register will be considered. Comments received after that time will be considered, time permitting.

- 12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses affected: Tourist oriented businesses such as antique shops, orchards, marinas, inns, bed and breakfasts, and restaurants.
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

- 13) Regulatory agenda on which this rulemaking was summarized: January 1998

The full text of the Proposed Rules begins on the next page:

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directional information, and mileage.

"Calendar Year" - a year beginning January 1 and ending the following December 31.

"Department" - the Illinois Department of Transportation, with central offices at 2300 South Dirksen Parkway, Springfield, Illinois 62764.

"Intersecting Road" - a public road intersecting a marked State highway.

"Marked State Highway" - a State-maintained highway carrying a State or US route number.

"Non-Freeway" - a divided or undivided marked State highway without full control of access and without grade separations at crossroads.

"Qualifying Business" - a business meeting the criteria for signing contained in Section 541.40(f).

"Rural Area" - an area outside of an urban area.

"Tourist Oriented Directional Sign" or "TODS" - a rectangular sign installed on a State highway displaying the words "TOURIST ACTIVITIES" with a maximum of four business signs mounted underneath.

"Trailblazer Sign" - a business sign displayed, together with an arrow panel, off of a marked State highway to advise motorists where to turn on the intersecting road.

"Urban Area" - An urban area includes: one or more incorporated communities listed by the Federal Bureau of Census as encompassing a total population of 2,500 or more within a defined area, including any unincorporated areas within such boundaries but excluding rural portions of "extended" communities; and Federal Bureau of Census designated places of 2,500 or more population.

Section 541.30 Tourist Oriented Directional Signs

- a) Tourist oriented directional signs shall only be erected in rural areas.
- b) No more than one tourist oriented directional sign will be erected within the right-of-way of a marked State highway for each direction of travel in advance of an intersecting road.
- c) All tourist oriented directional signs will be ground-mounted.
- d) Tourist oriented directional signs will not be installed within the right-of-way of a marked State highway within the corporate limits of any municipality located outside of an urban area unless the

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municipality agrees in writing to the installation.

- e) Each tourist oriented directional sign along a State highway shall be installed at a minimum distance of approximately 200 feet from other signs.

Section 541.40 Business Signs

- a) Specific types of businesses shall meet the following criteria to qualify for signing:

- 1) GAS: Should be open five days a week, including a Saturday or a Sunday, for a minimum of 12 hours a day for at least six months of the year. If open less than five days a week for six months, or if not open on either a Saturday or a Sunday, the days of the week and months open, as applicable, must be shown on the business sign. It shall have normal service station goods and services, including telephone, gas, oil, water and restroom. An attendant must be present at the business at all times the business is open.

- 2) FOOD: Should be open five days a week, including a Saturday or a Sunday, for at least six months of the year. If open less than five days a week for six months, or if not open on either a Saturday or a Sunday, the days of the week and months open, as applicable, must be shown on the business sign. It shall be certified by the Illinois Department of Public Health or local health department and have a public restroom and telephone.

- 3) LODGING: Should be open seven days a week for at least six months of the year. If open less than seven days a week for six months, the days of the week and months open, as applicable, must be shown on the business sign. It shall have a telephone, restroom and sleeping accommodations. The majority of the accommodations shall be available to the general public and not restricted to members only nor rented or leased on a time-share basis.

- 4) CAMPING: Should be open seven days a week for at least six months of the year. If open less than seven days a week for six months, the days of the week and months open, as applicable, must be shown on the business sign. It shall have camping and parking accommodations, restroom, telephone, and drinking water. The majority of the camp sites shall be available to the general public and not restricted to members only nor rented or leased on a time-share basis.

- 5) AGRICULTURAL BUSINESSES: Should be open five days a week, including a Saturday or a Sunday, during the applicable growing and harvesting season for the crop(s) involved and shall offer for sale primarily products grown, harvested, or produced within 50 miles of the business. If open less than five days a week for six months, or if not open on either a Saturday or a Sunday, the days of the week and months open, as applicable, must be shown on

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the business sign. Such businesses shall include but are not limited to fruit orchards, vegetable stands, tree farms, vineyards and wineries.

- 6) GENERAL TOURIST ATTRACTIONS: Should be open five days a week, including a Saturday or a Sunday, for at least six months of the year. If open less than five days a week for six months, or if not open on either a Saturday or a Sunday, the days of the week and months open, as applicable, must be shown on the business sign. General tourist attractions shall include but are not limited to marinas, sport fishing/bait facilities, stage theaters, amusement parks, riding stables, antique stores, craft stores, museums, golf courses, ski areas, facilities offering aircraft, boat, or train rides, and historic villages.
- 7) INELIGIBLE BUSINESSES: Businesses not normally associated with tourism are not eligible even when the majority of their visitors or income is derived from motorists not residing within a 25 air mile radius of the business. Such businesses include, but are not limited to, shopping malls, discount malls, furniture/clothing stores, automobile/truck dealerships, malls or garages, drug stores, movie theaters, community business districts, appliance stores, department stores, schools, houses of worship, real estate offices, auction houses, livestock sales facilities, sand and gravel facilities, and grocery stores.
- b) A maximum of four business signs for four individual qualifying businesses may be placed under each tourist oriented directional sign.
- c) No individual business shall be allowed more than one business sign under an individual tourist oriented directional sign.
- d) No more than one business sign for any individual qualifying business may be erected in any given direction at more than one intersection on any given State highway.
- e) Where there are qualifying businesses in each direction on the intersecting road, the business signs directing motorists to the left shall be placed above the business signs for those businesses to the right.
- f) Signing for a qualifying business shall only be allowed at a given marked State highway intersection where the business can be reached without crossing another marked State highway.
- g) Business Signing Priorities
  - 1) A maximum of four business signs may be installed at any one intersection with a State marked highway. Where there are more businesses eligible for and desiring signing than the number of signs permitted, those businesses nearest the intersection will be given first priority for signing.
  - 2) Business signs which have been installed will not be removed because of a nearer business desiring signing as long as the business having the signing continues to meet the established criteria and continues to pay the annual fees.
  - 3) When a space becomes available under an individual tourist

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oriented directional sign, the eligible business desiring signing submitting an application first along with the required application fee will be given first priority for signing. If that business does not remit the required yearly fee to the Department within 30 calendar days after being notified in writing that its application is approved, the space will be offered to the next eligible business submitting a valid application. In the event the Department receives applications, including the required application fees, from more than one business on any given business day, the business closest to the intersection will be given first priority for any available space. The Department will not install signs for any business until the required yearly fee is paid.

- 4) When a business closes due to remodeling, or due to an Act of God including, but not limited to, fire or flood, the business signs will be removed and stored by the Department for up to a maximum of six months. If the business remains closed after six months, the space will be declared available. In any event, if the allowable closure period extends to the subsequent calendar year, the annual fee for the business shall be paid for that year or the space will be declared available. Any portion of such closure time which may occur during the normal seasonal closure of the business as noted on the business signs will not count in determining the six month period.
- 5) When the type of business changes, such as an antique shop changing to a food establishment, the business will lose its signing priority. The business signs will be removed by the Department, and the space will be declared available. The business will also lose its signing priority if it closes for any length of time even during its normal seasonal closure as shown on the business signs and is openly up for sale. When a space is declared available a business which has lost its signing priority shall submit a new application, including the application fee, for inclusion in the program and its priority will be evaluated among all the other eligible businesses desiring signing at that intersection as set forth in subsection (g)(3) above.
- 6) Where it is necessary to measure distance in order to determine signing priority, the distance to each business establishment will be measured as the travel distance between the center of the intersection of the marked State highway with the intersecting road and the primary entrance to the business. Where an entrance serves more than one business, the driving distance using the proper marked driving aisles from the entrance to the parking space available for patrons nearest the business shall be added to the distance measured along the intersecting road.

## h) Location of Business

- 1) A business must be located within a rural area.
- 2) A business on the road intersecting with a marked State highway



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will not be signed on the State marked highway if the business is located with its property abutting the marked State highway, or, if the business or a sign at the site of the business is visible to the motorists from the intersecting road advising motorists of the appropriate entrance to the establishment.

- 3) A business not on the road intersecting with a marked State highway will be signed on the State marked highway if trailblazing or other signs are in place on the intersecting road and on such other roads as may be necessary to clearly advise motorists where to turn to reach the business. Where the intersecting road or other roads leading from the intersection with the State marked highway are unmarked State highways, the Department will place such trailblazer signs on the State highways for the fee established in Section 541.60(b)(2). Where roads are under local agency jurisdiction, signing will not be provided on State highways until legible trailblazer or other signs are placed by, or by permission of, such local agencies with directional information advising motorists where to turn. The business shall have the responsibility for arranging with the appropriate local agency for the placement of all signs on roads under the jurisdiction of that local agency.

## Section 541.50 Sign Design

- a) Tourist oriented directional signs will contain the words "TOURIST ACTIVITIES" in white legend six inches in height on a blue background 12 inches in height and 72 inches in width.
- b) Business signs will consist of the business' name in one or two lines of copy and shall not include any trademark or symbol. The business' name will be in white legend four inches in height on a blue background 18 inches in height and 72 inches in width and will contain the days and months of operation where applicable, and the mileage to the business measured to the nearest half mile. The mileage will not be shown where the distance is less than a half mile. Where necessary, the Department will abbreviate the name of the business so that it shall fit in the space provided.

## Section 541.60 Application, Fees, and Other Regulations

- a) Application
  - 1) Where the TODS program is implemented on a State highway for the first time, the Department will publish in local newspapers a notice soliciting participation from eligible tourist oriented businesses.
  - 2) Application forms will be available from the Department (see Section 541.1 Illustration A-District Boundary Map for a listing of District addresses and phone numbers) for all businesses that could qualify to have business signs included in this program.

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If a business wishes to participate in this program, it must complete an application form and submit it to the Department by the deadline indicated in the newspaper notice. Applications received after the indicated date will be considered if space is still available at the State highway intersection in question.

- 3) Where the Department determines from the initial application that the business meets the criteria listed in this Part and space is available, the application will be approved and returned to the business along with instructions concerning payment of the annual fee, and other appropriate information.
- 4) Applications for qualifying businesses desiring spaces subsequent to the initial installation will be considered on a first come-first served basis as spaces become available. Applications will be taken for spaces which may become available at some future date when there are no spaces available at the time the applications are submitted. In such cases, the application fee will be returned to the applicant and the applicant's name will be kept on file. When a space becomes available, the qualifying businesses who are on file will be notified by mail in the order of their initial application date to see if they are still interested in the space. The applicant who desires to have the available space and whose application has been on file the longest, providing the application fee is submitted within 45 days after the written notification, shall be given the available space with the remaining businesses being retained on file. Priority for two or more applicants with the same initial application date shall be based on the distance from the State highway with the business closest to the highway having the highest priority.
- b) Fees
  - 1) A \$50 nonrefundable application fee must be submitted by the business establishment to the Department with the application. A \$50 nonrefundable application fee will also be charged when a business reapplies for signing after their signs have been removed due to late rental payments, temporary withdrawal from the program, or when the type of operation of a business changes.
  - 2) An annual fee of \$65, sufficient to offset the cost of this program, will be charged for each business sign displayed on the State highway system. This fee is based on recovering the Department's costs for the program based on a six year life for posts and signs and includes the placement of new signs as necessary. Every other calendar year, the Department will recompute the fees and make such adjustments as may be warranted so as to reflect the cost of maintaining the signing system. Fees will be collected on an annual basis. When a business establishment makes an annual payment, it will be guaranteed participation in the program for the entire year, as long as it continues to meet the criteria under this Part. Any business

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closing or withdrawing from the program after making its annual payment will not be given a refund. A prorated fee will be charged for signs initially installed after the beginning of a calendar year. No proration will be given for seasonal closings. Where payment is not received by the Department within 30 days after the due date, the business sign(s) will be removed by the Department and the business will lose its signing priority to the next business desiring the space. When the fee is received after the business sign is removed, and space is still available on the panel, a fee of \$50 will be charged for reapplication as provided for in Section 541.60(b)(1), in addition to the annual fee for the remainder of the calendar year, as well as that portion of the annual fee owed for the period of time between the end of the preceding calendar year and the date the signs were removed.

4) A fee of \$150 for each business sign will be charged for a business requesting that its signs be replaced with new signs because of a change in the name of the business, or a change in the days or months of operation. Where such replacement is requested, all business signs for the specific business on the State highway system will be replaced at the same time. Also, any business signs which are tampered with by the business by altering the name, changing the days or months of operation, or by adding a logo, symbol or any other wording subsequent to their installation will be removed by the Department. If the business wishes to continue in the program, it shall pay a fee of \$150 per sign.

## c) Placing and Maintaining Business Signs

- 1) The Department will erect the signs on the State highway system after approval of the application for a business and proof that trailblazer signs, where required, are in place on highways under the jurisdiction of local agencies. Only the Department will place, maintain, remove, or alter the business signs on the State highway system.
- 2) Businesses will be required to certify on the application that they meet the established criteria. When the Department receives a complaint that a business may not comply, the suspected business will be contacted by the Department to determine if it meets the established criteria. If it is determined the facility fails to qualify, the business must change its operation so as to comply or its business signs will be removed and no refund will be made of any portion of the annual fees already paid.

## DEPARTMENT OF TRANSPORTATION

## NOTICE OF PROPOSED RULES

## Section 541. ILLUSTRATION A - District Boundary Map

## DISTRICT ENGINEERS

## DISTRICT 1

201 West Center Court  
(Inside Delivery)  
Schaumburg IL 60196-1096  
Phone: 847/705-4000

## DISTRICT 2

819 Depot Avenue  
Dixon IL 61021-3546  
Phone: 815/284-2271

## DISTRICT 3

700 East Norris Drive  
P.O. Box 697  
Ottawa IL 61350-0697  
Phone: 815/434-6131

## DISTRICT 4

401 Main Street  
Peoria IL 61602-1111  
Phone: 309/671-3333

## DISTRICT 5

Route 133 West  
P.O. Box 610  
Paris IL 61944-0610  
Phone: 217/465-4181

## DISTRICT 6

126 East Ash Street  
Springfield IL 62704-4766  
Phone: 217/782-7301

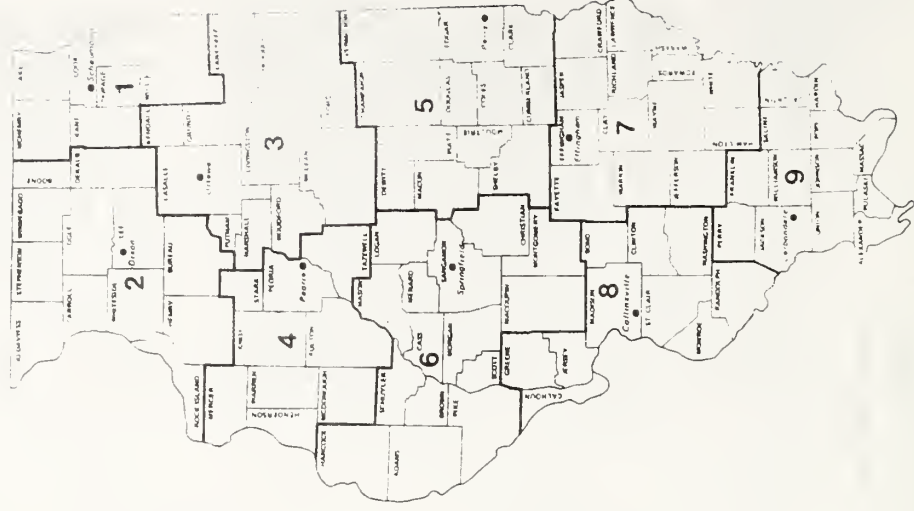
## DISTRICT 7

400 West Wabash  
Effingham IL 62401-2699  
Phone: 217/342-3951

## DISTRICT 8

1102 Eastport Plaza Dr.  
Collinsville IL 62234-6198  
Phone: 618/346-3100

## DISTRICT 9



DEPARTMENT OF TRANSPORTATION  
NOTICE OF PROPOSED RULES

State Transportation Bldg.  
P.O. Box 100  
Carbondale IL 62903-0100  
Phone: 618/549-2171

BOARD OF SAVINGS INSTITUTIONS  
NOTICE ADOPTED AMENDMENTS

- 1) Heading of the Part: Board of Savings Institutions
- 2) Code Citation: 38 Ill. Adm. Code 500
- 3) Section Number: Adopted Action:  
500.200 Amendment  
500.230 Amendment
- 4) Statutory Authority: Implementing and authorized by Section 7-20 through 7-27 of the Illinois Savings and Loan Act of 1985 [205 ILCS 105/7-20 through 7-27] and Section 9018 of the Savings Bank Act [205 ILCS 205/9016].
- 5) Effective Date of Adopted Amendment: March 30, 1998
- 6) Does this amendment contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) Date Filed in Agency's Principal Office: March 30, 1998
- 9) Date Notice of Proposed Amendments was published in Illinois Register: December 26, 1997, 21 Ill. Reg. 16941
- 10) Has JCAR issued a Statement of Objections to this rule? No
- 11) Differences between proposal and final version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? No changes were requested.
- 13) Will this amendment replace emergency amendments currently in effect? No
- 14) Are there any other proposed amendments pending on this Part? No
- 15) Summary and Purpose of Rules: On October 23, 1997, the Board of Savings Institutions approved reducing its annual schedule of regular meetings from four meetings to two meetings. This rulemaking amends Section 500.200 to implement that change. (In addition to its regular meetings, the Board may call special meetings when necessary pursuant to Section 500.210 of the rules.) The proposed rulemaking also amends Section 500.230 to correct a misspelling.
- 16) Information and questions regarding these Adopted Amendments shall be directed to:



## BOARD OF SAVINGS INSTITUTIONS

## NOTICE ADOPTED AMENDMENTS

John Arthur  
Legislative Liaison  
Office of Banks and Real Estate  
500 East Monroe, Suite 900  
Springfield, Illinois 62701  
217/782-3000

The full text of the Adopted Amendments begins on the next page:

## BOARD OF SAVINGS INSTITUTIONS

## NOTICE ADOPTED AMENDMENTS

TITLE 38: FINANCIAL INSTITUTIONS  
CHAPTER IV: BOARD OF SAVINGS INSTITUTIONS

## PART 500

## BOARD OF SAVINGS INSTITUTIONS

## SUBPART A: GENERAL PROVISIONS

Section  
500.100 Applicability

## SUBPART B: MEETINGS

Section  
500.200 Regular Meetings  
500.210 Special Meetings  
500.220 Notice of Meetings  
500.230 Quorum ~~Quorum~~

## SUBPART C: OFFICERS AND COMMITTEES

Section  
500.300 Officers  
500.310 Chairman  
500.320 Vice-Chairman  
500.330 Secretary  
500.340 Committees

## SUBPART D: HEARINGS BEFORE THE BOARD OF SAVINGS INSTITUTIONS

Section  
500.400 Applicability  
500.410 Definitions  
500.420 Filing  
500.430 Form of Documents  
500.440 Computation of Time  
500.450 Appearances  
500.460 Request for Hearing and Filing of Verified Complaint  
500.470 Notice of Hearing  
500.480 Service of Notice of Hearing  
500.490 Motion and Answer  
500.500 Consolidation and Severance of Matters - Additional Parties  
500.510 Intervention  
500.520 Postponement or Continuance of Hearing  
500.530 Prehearing Conferences  
500.540 Discovery  
500.550 Admissions  
500.560 Subpoenas

BOARD OF SAVINGS INSTITUTIONS

BOARD OF SAVINGS INSTITUTIONS

NOTICE ADOPTED AMENDMENTS

NOTICE ADOPTED AMENDMENTS

- 500.570 Authority of Hearing Officer
- 500.580 Bias or Disqualification of Hearing Officer
- 500.590 Authority of Board Members
- 500.600 Conduct of Hearing
- 500.610 Evidence
- 500.620 Official Notice
- 500.630 Viewing of Premises
- 500.640 Admission of Business Records in Evidence
- 500.650 Hostile Witnesses/Examination of Adverse Party
- 500.660 Default
- 500.670 Record of Proceedings
- 500.680 Briefs
- 500.690 Hearing Officer's Report
- 500.700 Final Order of the Board
- 500.710 Rehearings and Reopening of Hearings

meeting can hear each other. Participation in such meeting shall constitute attendance and presence in person at the meeting of the person or persons so participating.

(Source: Amended at 22 Ill. Reg. 6642, effective MAR 30 1998)

AUTHORITY: Implementing and authorized by Sections 7-20 through 7-27 of the Illinois Savings and Loan Act of 1985 [205 ILCS 105/7-20 through 7-27] and Section 9018 of the Savings Bank Act [205 ILCS 205/9018].

SOURCE: Filed August 15, 1973; codified at 8 Ill. Reg. 17916, September 14, 1984; old Part repealed, new Part adopted at 15 Ill. Reg. 17376, effective November 14, 1991; recodified from Chapter IV, Savings and Loan Board, to Chapter II, Office of Banks and Real Estate, pursuant to PA 89-508, at 20 Ill. Reg. 14947; amended at 22 Ill. Reg. 6642, effective MAR 30 1998.

SUBPART B: MEETINGS

Section 500.200 Regular Meetings

The Board of Savings Institutions shall hold two regular meetings each year on the--first-Wednesday-of-every-March,-June,-September-and-December. One meeting shall be in the first calendar quarter of the year and the second meeting shall be in the fourth calendar quarter of the year. The Board shall designate the time and place for holding regular meetings.

(Source: Amended at 22 Ill. Reg. 6642, effective MAR 30 1998)

Section 500.230 Quorum

A majority of the members of the Board of Savings Institutions shall constitute a quorum provided, that if less than a majority of such number of members are present at said meeting, a majority of the members may adjourn the meeting. The Board or any committee of the Board may participate in and act at any meeting of such Board or committee through the use of telephone or other communications equipment by means of which all persons participating in the

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENTS

Conrad S. Rubinkowski  
Office of General Counsel  
Illinois Commerce Commission  
527 East Capitol Avenue  
P.O. Box 19280  
Springfield, IL 62794-9280  
217/785-3922

The full text of the Adopted Amendments begins on the next page.

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Uniform System of Accounts for Electric Utilities
- 2) Code Citation: 83 Ill. Adm. Code 415
- 3) Section Numbers: Adopted Action:  
415.10 Amendment  
415.20 Amendment  
415.210 Amendment  
415.410 Amendment
- 4) Statutory Authority: Implementing Sections 5-102 and 5-103 and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/5-102,5-103, and 10-101].
- 5) Effective Date of Rules: April 1, 1998
- 6) Does this rulemaking contain an automatic repeal date: No
- 7) Do these rules contain incorporations by reference? Yes
- 8) Date filed in Agency's Principal Office: March 25, 1998
- 9) Notice of Proposal Published in Illinois Register: August 1, 1997 at 21 Ill. Reg. 9926
- 10) Has JCAR issued a Statement of objections to these rules? No
- 11) Differences between proposal and final version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? No changes required.
- 13) Will these rules replace emergency rules currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rules: The Commission has adopted 83 Ill. Adm. Code 415, "Uniform System of Accounts for Electric Utilities," as its system of accounts for those electric utilities under its jurisdiction. Part 415 incorporates by reference 18 CFR 101 with certain specified additions and deletions and 18 CFR 116. The purpose in amending Part 415 is to incorporate 18 CFR 101 and 116 as of February 11, 1997, which are available in an electronic format, and to make two minor housekeeping changes.
- 16) Information and questions regarding these adopted rules shall be directed to:



## ILLINOIS COMMERCE COMMISSION

## NOTICE OF ADOPTED AMENDMENTS

## TITLE 83: PUBLIC UTILITIES

## CHAPTER I: ILLINOIS COMMERCE COMMISSION

## SUBCHAPTER C: ELECTRIC UTILITIES

## PART 415

## UNIFORM SYSTEM OF ACCOUNTS FOR ELECTRIC UTILITIES

SUBPART A: GENERAL PROVISIONS AND ADOPTION OF  
CFR PROVISIONS BY REFERENCE

Section  
415.10  
415.20

Adoption of 18 CFR 101 by Reference  
Adoption of 18 CFR 116 by Reference

## SUBPART B: ADDITIONS TO AND DELETIONS FROM CFR PROVISIONS

Section  
415.200  
415.210

Definitions  
General Instruction 1  
General Instruction 5  
General Instruction 7 (Repealed)  
General Instruction 7.1 (Repealed)  
General Instruction 12 (Repealed)  
General Instruction 13  
General Instruction 17  
General Instruction 18  
General Instruction 20  
General Instruction 21  
General Instruction 21  
Electric Plant Instruction 2 (Repealed)  
Electric Plant Instruction 3  
Electric Plant Instruction 5 (Repealed)  
Electric Plant Instruction 7  
Electric Plant Instruction 10  
Income Chart of Accounts  
Operation and Maintenance Expense Chart of Accounts  
Account 102 (Repealed)  
Account 105  
Account 108 (Repealed)  
Accounts 201, 202, 203, and 204  
Account 207  
Account 211  
Account 214  
Account 411.8  
Account 411.9  
Account 416  
Account 426.1  
Account 439  
Account 518

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF ADOPTED AMENDMENTS

415.9140 Accounts 914 and 915  
415.9302 Account 930.2

APPENDIX G Operation and Maintenance Expense Accounts  
EXHIBIT A Accounts 914 and 915

AUTHORITY: Implementing Sections 5-102 and 5-103 and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/5-102, 5-103, and 10-101].

SOURCE: Adopted July 14, 1960, effective January 1, 1962; old rules repealed, new rules adopted and codified at 8 Ill. Reg. 160, effective January 1, 1984; amended at 9 Ill. Reg. 4016, effective April 1, 1985; amended at 9 Ill. Reg. 13079, effective August 15, 1985; amended at 12 Ill. Reg. 11710, effective July 15, 1988; amended at 18 Ill. Reg. 10692, effective July 1, 1994; amended at 18 Ill. Reg. 17996, effective December 15, 1994; amended at 22 Ill. Reg. 6547, effective APR 01 1998.

SUBPART A: GENERAL PROVISIONS AND ADOPTION OF  
CFR PROVISIONS BY REFERENCE

## Section 415.10 Adoption of 18 CFR 101 by Reference

The Illinois Commerce Commission ("Commission") adopts 18 CFR 101, as of February 11, 1997, April 1, 1993, as its uniform system of accounts for electric utilities, subject to the exceptions set forth in Section 415.200 et seq. of this Part. No incorporation in this Part includes any later amendment or edition.

(Source: Amended at APR 01 1998, 22 Ill. Reg. 6547, effective

## Section 415.20 Adoption of 18 CFR 116 by Reference

The Illinois Commerce Commission adopts 18 CFR 116, as of February 11, 1997, April 1, 1993, as its prescription of units of property for use in accounting for additions to and retirements of electric plant. No incorporation in this Part includes any later amendment or edition.

(Source: Amended at APR 01 1998, 22 Ill. Reg. 6547, effective

## SUBPART B: ADDITIONS TO AND DELETIONS FROM CFR PROVISIONS

## Section 415.210 General Instruction 1

General Instruction 1, "Classification of Utilities," is deleted and replaced by the following:

"A. This system of accounts applies to all utilities; provided, however,

## ILLINOIS COMMERCE COMMISSION

## NOTICE OF ADOPTED AMENDMENTS

if in the opinion of any utility having annual operating revenues of less than \$10,000,000, this system of accounts should prove to be unduly burdensome, such utility may, with the approval of the Director of Accounting of the Commission, group or combine certain accounts herein in order that the accounting requirements for small utilities may conform more nearly to the nature and volume of business transacted. Requests to group or combine accounts shall be made in writing, including a statement of the proposed modifications. In determining whether this system of accounts is unduly burdensome with respect to a utility, the Director of Accounting shall consider, among other things, whether compliance will require additional resources ~~personnel--or--additional--office--equipment--such-as--electronic-data processing--equipment~~. The Director of Accounting shall make this determination within six months of receiving the written request. Having obtained such approval, the utility shall continue to use the system as modified on a consistent basis.

B. For purposes of implementation, all electric utilities subject to Illinois Commerce Commission jurisdiction shall be regarded as "major" utilities. Account designations, instructions, interpretations, and references to "nonmajor" utilities will not apply.

C. The Commission does not commit itself to the approval or acceptance of any item set out in any account, for the purpose of fixing rates or in determining other matters before the Commission."

(Source: Amended APR 01 1998 22 Ill. Reg. 6647, effective

## Section 415.410 General Instruction 20

In General Instruction 20, "Accounting for leases" in paragraph A, second sentence the phrase which reads "is effective January 1, 1984" is replaced with "was effective August 15, 1985" ~~deleted~~. In the third sentence of this paragraph, the phrase "reporting to the FERC," is amended to read "reporting to the Commission."

(Source: Amended at 22 Ill. Reg. 6647, effective APR 01 1998)

## ENVIRONMENTAL PROTECTION AGENCY

## NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Procedures for Collection of Air Pollution Site Fees

2) Code Citation: 35 Ill. Adm. Code 251

3) Section Numbers: Adopted Action:  
 251.101 Amended  
 251.103 Amended  
 251.201 Amended  
 251.203 Amended  
 251.208 Amended  
 251.301 Amended  
 251.310 Amended

4) Statutory Authority: 415 ILCS 5/9.6

5) Effective Date of Rulemaking: March 31, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this rulemaking contain incorporations by reference? No

8) Date Filed in Agency's Principal Office: March 31, 1998

9) Notice of Proposal Published in Illinois Register: July 11, 1997, 21 Ill. Reg. 8759

10) Has JCAR issued a Statement of Objections to these rules? No; but JCAR has issued a Statement of Recommendation

A) Statement of Recommendation: 22 Ill. Reg. 4512, March 6, 1998.

B) Date Agency Response Submitted for Approval to JCAR: March 31, 1998.

11) Difference(s) between proposal and final version:

In Section 251.301(a), replace the word "Sections" with "Section" and replace the sixth to the last word in the first sentence "of" with "after" as follows:

a) The owner or operator of a site shall request reconsideration of the amount of the air pollution site fee as determined by the Agency pursuant to Section Sections 251.201(a)(1) and (2) within 30 days after of issuance of a billing statement. Failure to request reconsideration within this period shall constitute waiver of all rights to seek reconsideration of the amount from the Agency and will result in waiver of right to appeal pursuant to Section 251.310.

12) Have all the changes agreed upon by the agency and JCAR been made as

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF ADOPTED AMENDMENTS

- indicated in the agreement letter issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rulemaking:

The adopted amendments update the Agency's procedural rules for the collection of air pollution site fees with changes in the site fee provisions in Section 9.6 of the Environmental Protection Act (Act) [415 ILCS 5/9.6]. The amended rule only applies to sources not subject to Section 39.5 of the Act [415 ILCS 5/39.5].

- 16) Information and questions regarding these adopted amendments shall be directed to:

Bonnie Sawyer, Assistant Counsel  
Illinois Environmental Protection Agency  
P.O. Box 19276  
Springfield IL 62794-9276  
(217) 782-5544

The full text of the Adopted Amendments begins on the next page:

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF ADOPTED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION

SUBTITLE B: AIR POLLUTION

CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 251

PROCEDURES FOR COLLECTION OF AIR POLLUTION SITE FEES

SUBPART A: INTRODUCTION

Section	Purpose
251.101	Definitions
251.103	

SUBPART B: PROCEDURES FOR BILLING AND COLLECTION OF AIR POLLUTION SITE FEES

Section	
251.201	Amount of Air Pollution Site Fee
251.202	Withdrawal of Permits
251.203	Agency Billing Procedures
251.208	Time and Method of Payment
251.210	Form of Payment
251.212	Return of Site Fee (Repealed)
251.215	Prohibition Against Refund

SUBPART C: RESOLUTION OF DISPUTES

Section	
251.301	Request for Reconsideration
251.305	Effect of Request for Reconsideration
251.308	Agency Response
251.310	Appeal of Final Agency Action

AUTHORITY: Implementing Section 5 and authorized by Section 9.6 of the Environmental Protection Act [415 ILCS 5/5 and 9.6].

SOURCE: Adopted at 10 Ill. Reg. 19968, effective November 14, 1986; emergency amendments at 13 Ill. Reg. 955, effective January 1, 1989 for a maximum of 150 days; amended at 13 Ill. Reg. 8867, effective May 30, 1989; amended at 22 Ill. Reg. 6659, effective MAR 31 1998.

SUBPART A: INTRODUCTION

Section 251.101 Purpose

The purpose of this Part is to establish a system for determination and for collection of air pollution site fees, except as provided in Section 39.5 of the Act.



## ENVIRONMENTAL PROTECTION AGENCY

## NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 22 Ill. Reg. 6652 effective MAR 31 1998)

## Section 251.103 Definitions

"Act": the Environmental Protection Act [415 ILCS 5] (111-Rev-Stat-1967-CH-111-17-para-1001-et-seq.).

"Agency": The Environmental Protection Agency established by the Environmental Protection Act.

"Annual": Of the period of one year commencing on the original billing date of a particular air pollution site fee.

"Annual Fee": The air pollution site fee prescribed by Section 9.6 of the Act and collected by the Agency pursuant to this Part.

"Permitted to Emit": The sum of allowable emissions of regulated pollutants at a site from all emission sources which have received an operating permit from the Agency's Bureau of Air Pollution Control.

"Regulated Air Pollutant": Any contaminant which is emitted to the atmosphere and which is regulated under the Act or the regulations of the Illinois Pollution Control Board and receives an air pollution operating permit after January 1, 1986.

"Site": Any location, place, tract of land, and facilities, including but not limited to, buildings and improvements used for purposes subject to regulation or control by the Environmental Protection Act or regulations thereunder.

(Source: Amended at 22 Ill. Reg. 6652, effective MAR 31 1998)

SUBPART B: PROCEDURES FOR BILLING AND COLLECTION  
OF AIR POLLUTION SITE FEES

## Section 251.201 Amount of Air Pollution Site Fee

a) Except as provided in Section 39.5 of the Act, an annual air pollution site fee shall be paid by the owner or operator of an air pollution site, in accordance with the requirements of this Part, in the amounts set forth below:

1) For any site for which an air pollution operating permit was issued, renewed or revised after December 31, 1980, the annual fee shall be \$600 if the site is permitted to emit less than 25 tons or more per year of any combination of regulated air

## ENVIRONMENTAL PROTECTION AGENCY

## NOTICE OF ADOPTED AMENDMENTS

pollutants, or \$100 if the annual site fee shall be \$100 is permitted to emit less than 25 tons per year.

2) For any site for which a fee is not required under subsection (1) above, but for which an air pollution operating permit has been issued, renewed or revised after January 1, 1986, the annual fee shall be \$250 if the site is permitted to emit at least 25 tons or more per year but less than 100 tons per year of any combination of regulated air pollutants, or \$75 if the annual site fee shall be \$1,000 is permitted to emit less than 25 tons per year.

3) For any site permitted to emit at least 100 tons per year but not more than 185 tons per year of any combination of regulated air pollutants, the annual site fee shall be \$13.50 per ton.

4) For any site permitted to emit more than 185 tons per year of any combination of regulated air pollutants, the annual site fee shall be \$2,500.

5) The provisions of this Section shall not apply to a site permitted solely as a retail liquid dispensing facility that has air pollution control equipment.

b) The Agency shall annually assess the amount of the air pollution site fee due based upon its records of permitted sites and allowable emissions from those sites.

c) It shall be the obligation of the owner or operator to notify the Agency's Bureau of Air Pollution Control, in writing, of the cessation of or reduction in the operation at the site and to request revision or withdrawal of all appropriate operating permits. Notification and requests shall be sent to:

Illinois Environmental Protection Agency

Bureau of Air Pollution Control, Permit Section  
Attention: Records Unit 2200 Church Hill Road

P.O. Box 19506 19276

Springfield, IL 62794-9506 9276

(Source: Amended at 22 Ill. Reg. 6652, effective MAR 31 1998)

## Section 251.203 Agency Billing Procedures

a) The amount of the air pollution site fee and the due date of payment shall be included on a billing statement sent attached to the first operating permit issued or renewed after January 1, 1986 to the owner or operator of a site by the Agency's Bureau of Air Pollution Control.

b) For each year subsequent to the year of issuance as described in subsection (a), the amount of the air pollution site fee and the due date of payment shall be included on a billing statement addressed to the owner or operator of a site and mailed by the Agency at least 30 days prior to the due date of payment.

## ENVIRONMENTAL PROTECTION AGENCY

## NOTICE OF ADOPTED AMENDMENTS

- c) In the event of an increased assessment in fees, the Agency shall notify the owner or operator of a site of such increase with the annual billing.
- d) If the owner or operator of a site has elected to use the advance payment method described in Section 251.208(a)(2), the annual billing statement shall include notification of increased assessment in fees, the status of the fee account, and a statement of any additional fees due to the Agency from the owner or operator of the site.

(Source: Amended at 22 Ill. Reg. 6652, effective MAR 31 1998)

## Section 251.208 Time and Method of Payment

- a) The owner or operator of a site shall make payment to the Agency by either of the following methods:
- 1) Payment shall be made annually in the amount described in Section 251.201; or
  - 2) Payment may be made in advance in the amount described in Section 251.201 multiplied by the number of years for which the first operating permit after January 17, 1986 has been issued to the owner or operator of a site by the Agency's Bureau of Air Division--of-Air-Pollution-Control or multiplied by the number of years remaining on the longest-term valid operating permit issued to the owner or operator of a site.
- b) The due date of payment for each year shall be on the date 45 thirty days subsequent to the original billing date.

(Source: Amended at 22 Ill. Reg. 6652, effective MAR 31 1998)

## SUBPART C: RESOLUTION OF DISPUTES

## Section 251.301 Request for Reconsideration

- a) The owner or operator of a site shall request reconsideration of the amount of the air pollution site fee as determined by the Agency pursuant to Section 251.201(a)(1) and (2) within 30 days after of issuance of a billing statement. Failure to request reconsideration within this period shall constitute waiver of all rights to seek reconsideration of the amount from the Agency and will result in waiver of right to appeal pursuant to Section 251.310.
- b) All requests for reconsideration shall be in writing and shall include all pertinent facts and arguments in support of the request. Such requests shall be addressed to:

Illinois Environmental Protection Agency  
Bureau of Air Division--of-Air-Pollution-Control, Permit Section  
Attention: Records Unit 2209-Churchill-Road

## ENVIRONMENTAL PROTECTION AGENCY

## NOTICE OF ADOPTED AMENDMENTS

P. O. Box 19506 19276  
Springfield, IL 62794-9506 9276

(Source: Amended at 22 Ill. Reg. 6652, effective MAR 31 1998)

## Section 251.310 Appeal of Final Agency Action

The owner or operator of a site may appeal the Agency's determination of the air pollution site fee pursuant to the Administrative Review Law [735 ILCS 5/Art. III] (1117-Rev-Stat-19057-ch-110-par-3-101).

(Source: Amended at 22 Ill. Reg. 6652, effective MAR 31 1998)

ILLINOIS DEPARTMENT OF HUMAN RIGHTS

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Financial Institutions
- 2) Code Citation: 38 Ill. Adm. Code 800
- 3) Section Number:  
800.10 Repealed  
800.20 Repealed  
820.30 Amendment  
820.40 Amendment  
820.50 Amendment  
820.60 Amendment
- 4) Authority: Implementing Article IV [775 ILCS 5/Art 4] of the Illinois Human Rights Act, and authorized by Section 7-101(A) of the Illinois Human Rights Act [775 ILCS 5/4-104(B) and (C) and Section 7-101(A)].
- 5) Effective Date of Rule(s): 3/27/98
- 6) Does the rulemaking contain an automatic repeal date? No
- 7) Does this rule contain incorporations by reference? No
- 8) Date filed in Agency's Principal Office: March 27, 1998
- 9) Notice(s) of Proposal Published in Illinois Register: March 28, 1997
- 10) Has JCAR issued a statement of objection to these rules? No
- 11) Difference(s) between proposal and final version: In the Table of Contents, Section 800.60, deleted the word "Purpose".  
  
Made technical corrections to the Authority Note.  
  
In Section 800.30, in the definition of "Creditor", added a comma after the word "cards".  
  
In Section 800.30, in the definition of "Credit Card", corrected statutory citation.  
  
In Section 800.30, in the definition of "Empirically derived credit system", changed the phrase "credit worthy and non-creditworthy" to "credit worthy and/or non-credit-worthy".  
  
In Section 800.40(a), deleted the words "Federal Reserve System (12 CFR 202.13)" and added in their place the words "Equal Credit Opportunity Act (15 U.S.C. 1601 et seq.) and regulations issued thereunder, effective September 30, 1996."

ILLINOIS DEPARTMENT OF HUMAN RIGHTS

NOTICE OF ADOPTED AMENDMENTS

- In Section 800.40(b)(1), after the word "applicants", added the words "or if the inquiry is made pursuant to an empirically derived credit system which includes age as a variable as permitted by the Equal Credit Opportunity Act (15 U.S.C. 1601 et seq.) and regulations issued thereunder, effective September 30, 1996."
- At the end of Section 800.40(b)(2), corrected stricken punctuation.
- At the end of Section 800.40(b)(3), underlined the word "made".
- In the heading to Section 800.40(b)(4), changed "Marital Status" to "Marital and Dependent Status".
- In Section 800.40(b)(4)(A), added a new subsection b)(4)(A) entitled "Permissible Inquiries." and moved the language from 800.40(b)(4)(C) beginning with the words "A creditor".
- Changed the existing heading for Section 800.40(b)(4)(A) to 800.40(b)(4)(B), deleted the word "Spousal", and added "i)" before "If".
- In the heading for Section 800.40 (b)(4)(B), deleted "B)", added "ii)", and deleted "Permissible Spousal Inquiries." Also, after the overstricken word "not", added the word "only". Also, after the phrase "former spouse", added, "(referred to in this subsection (b)(4)(B)(ii) as "person")" deleted the word "only" before the word "if", and before the word "if", added the words "to the extent that such information may be requested about an applicant". Subsequent references to "spouse" in this subsection were changed to "person". Also, deleted "i)" before the phrase "the spouse will be permitted", and the subsequent "ii)", "iii)" and "iv)". Also, deleted the phrase "B) If any of the above criteria is satisfied..." through, and including, the words, "about an applicant;". Also, changed the "t" in the phrase "the applicant may then" to a capital "T".
- In Section 800.40(b) (5), overstruck the label "6)" and "however,".
- In Section 800.50(a), added a comma after the word "characteristic". Also, after the word "age", deleted the words "such a", and after "a" added the words "an empirically derived:". Also, after the word "sound", added a period and deleted the words ", which may be determined if", and added the words "A system shall be deemed demonstrably and statistically sound if".
- In the new Section 800.50(b), showed the new "b)" as underlined and "d)" as overstricken, and corrected existing language.
- In the new section 800.60(a), corrected existing language.
- In the new section 800.60(c), added a new label "c)", corrected existing



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language, and underlined the words "this Part".

- 12) Have all the change agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any amendment spending on this Part? No
- 15) Summary and Purpose of Rulemaking: The amendments delete the Department's rules which are duplicative of the Act, clarify the Department's regulations concerning financial institutions and delete provisions interpreting the Act when such provisions of the Act are better suited to judicial interpretation than interpretation through regulation.
- 16) Information and questions regarding these adopted amendments shall be directed to:

David T. Rothal, Attorney  
Illinois Department of Human Rights  
100 West Randolph Street, Suite 10-100  
Chicago, Illinois 60601  
Telephone: 312/814-6242  
TDD: 312/263-1579

The full text of the Adopted Amendments begins on the next page:

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TITLE 38: FINANCIAL INSTITUTIONS  
CHAPTER VI: DEPARTMENT OF HUMAN RIGHTS

PART 800

DISCRIMINATION INVOLVING CREDIT

Section

- 800.10 Scope and Purpose (Repealed)
- 800.20 Coverage (Repealed)
- 800.30 Other Definitions
- 800.40 Permissible Inquiries of Credit Applicants
- 800.50 Empirically Derived Credit Systems
- 800.60 Special Purpose Credit Programs

AUTHORITY: Implementing Section 4-104(B) and (C) and authorized by Section 7-101(A) of the Illinois Human Rights Act [775 ILCS 5/4-104(B) and (C) and 7-101(A)].

SOURCE: Adopted at 7 Ill. Reg. 9889, effective August 15, 1983; codified at 8 Ill. Reg. 15926; amended at 22 Ill. Reg. 6659, effective

MAY 27 1998

Section 800.10 Scope and Purpose (Repealed)

- a) Article 4 of the Human Rights Act ("Act") requires covered lenders and firms offering credit cards to the public to refrain from unlawful discrimination and to adhere to other standards in making loans and extending credit. See 7 Ill. Rev. Stat. ch. 607, pars. 4-102 and 4-103. ("Unlawful discrimination" is defined in section 1-103(9) of the Act as encompassing discrimination based on race, color, religion, national origin, ancestry, age, sex, marital status, handicap, or unfavorable military discharge). Section 4-104 of the Act prescribes certain exemptions, however, three of which are to be developed in regulations adopted by the Department. These include:
- 1) permitting inquiries into otherwise prohibited characteristics where they constitute "pertinent" element(s) of credit-worthiness;
- 2) sanctioning the use of "empirically derived credit system(s)" which consider age; and
- 3) allowing the refusal of credit pursuant to "special purpose credit program(s)" offered to meet special social needs.
- b) The regulations in this part prescribe the standards and criteria applicable to these three exemptions.

(Source: Repealed at 22 Ill. Reg. 6659, effective MAY 27 1998)

Section 800.20 Coverage (Repealed)

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mental characteristic of a person including a characteristic requiring the person's use of a guide or hearing dog or the history of such a characteristic or the perception of such a characteristic by the person complained against which characteristic results from disease injury congenital condition of birth or functional disorder but is unrelated to the person's ability to repay the indebtedness in question.

"Marital Status". The term "marital status" means the legal status of being married, single, separated, divorced or widowed.

"Prohibited Characteristic". The term "prohibited characteristic" refers to any characteristic or combination thereof, the consideration of which constitutes "unlawful discrimination" under Section 1-103(f) of the Act, namely, the characteristics of race, color, religion, national origin, ancestry, age, sex, marital status, handicap, and unfavorable discharge from military service as those terms are defined in the Act and these rules.

(Source: Amended at 22 Ill. Reg. 6633, effective MAR 27 1998)

Section 800.40 Permissible Inquiries of Credit Applicants.

- a) Generally. Except as expressly authorized in this Section, or in Sections 800.50 or 800.60 of this Part, or under any law or regulation of the United States or the State of Illinois, a creditor financial institution or credit card issuer may not inquire of any applicant for a loan or credit card regarding any characteristic the consideration of which would constitute unlawful discrimination under the Act. Nothing in this Part shall restrict a creditor from inquiring into whether an applicant's listed income is derived from a public assistance program to evaluate the likely continuation and future reliability of those payments, and to ascertain its rights and remedies regarding repayment, if the inquiry is made uniformly of all applicants. Moreover, nothing in this Part shall restrict creditors from making inquiries to the extent required for federal monitoring purposes under the Equal Credit Opportunity Act (15 U.S.C. 1601 et seq.) and regulations issued thereunder, effective September 30, 1996. This shall not mean, however, that a mortgage lender is prohibited from inquiring of applicants regarding their race, national origin, age, sex, and marital status to the extent required for federal monitoring purposes under Section 202.13 of Regulation B of the Board of Governors of the Federal Reserve System (12 CFR 202.13), as long as the inquiry is made in conformity with the requirements of that regulation.
- b) Pertinent Elements of Creditworthiness Creditworthiness. Pursuant to Section 4-104(B)(1) of the Act [775 ILCS 5/4-104(B)(1)]

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a) Financial Institutions, Loans. The prohibitions of Section 4-102 of the Act apply to any financial institution in connection with applications for and the granting of loans. The term "financial institution" is defined in Section 4-101(f) as encompassing any bank, credit union, insurance company, mortgage banking company or savings and loan association which operates or has a place of business in Illinois. The term "loan" under Section 4-101(e), specifically includes mortgage and home improvement and other types of loans.

b) Credit Card Companies. The prohibitions of Section 4-103 of the Act apply to any person who offers credit cards to the public in Illinois. The term "credit card" for this purpose has the same meaning as in Section 2-03 of the Illinois Credit Card Act, Ill. Rev. Stat., ch. 121-1/2, par. 602.03.

(Source: Repealed at 22 Ill. Reg. 6633, effective MAR 27 1998)

Section 800.30 Other Definitions

As used in the Act and these regulations, the following terms have the meanings indicated:

Creditor -- shall mean a person who offers credit cards, or a financial institution.

Credit card -- shall have the meaning defined in Section 2.03 of the Illinois Credit Card and Debit Act [720 ILCS 250/2.03].

Empirically derived credit system -- shall mean a credit scoring system which evaluates an applicant's creditworthiness primarily by assigning points (or by using a comparable basis for assigning weights) to key attributes describing the applicant and other aspects of the transaction. In such a system, the points assigned to each attribute:

are derived from an empirical comparison of sample groups of the population of creditworthy and/or non-creditworthy applicants of a creditor, who applied for credit within a reasonable preceding period of time; and

determine, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy.

"Age". The term "age" means the chronological age of a person who is 40 but not yet 70 years old.

"Handicap". The term "handicap" refers to a determinable physical or



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Section--4-104(B)--(1) of the Act provides that financial institutions and credit card issuers are not precluded from making an inquiry of the applicant's age, permanent residence, immigration status, or any additional information if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of credit worthiness as provided in regulations of the Department. Under this exemption the following inquiries are permissible for the purposes and under the circumstances indicated:

- 1) Age. A creditor may inquire into an applicant's age to ensure that the applicant has the legal capacity to enter into a binding contract if the inquiry is made of all applicants or if the inquiry made pursuant to an empirically derived credit system which includes age as a variable as permitted by the Equal Credit Opportunity Act (15 U.S.C. 1601 et seq.) and regulations issued thereunder, effective September 30, 1996. To assess, from the applicant's occupation and probable length of time to retirement whether the applicant's income (including retirement income) will support the extension of credit to its maturity, to weigh the adequacy of any collateral offered to secure the transaction against the life expectancy of the applicant, or to evaluate the significance of the applicant's length of employment or residence--A creditor may also inquire of an applicant's age in connection with an application for credit insurance to determine the conditions on which such insurance may be available to the applicant.
- 2) Permanent Residence and Immigration Status. A creditor may inquire into an applicant's permanent residence and immigration status to determine its rights and remedies regarding repayment, provided the inquiry is made uniformly of all applicants without regard to race, national origin, or other prohibited characteristic.
- 3) Gender Sex and Marital Status. A creditor may not request the sex of an applicant, but may request the designation of a title from among "Ms.", "Miss", "Mr.", or "Mrs.", if the designation is made clearly denominated as optional with the applicant. A creditor may not make inquiries related to the pregnancy of an applicant, or the likelihood of pregnancy.

Marital and Dependent Status.

A) Permissible Inquiries.

A creditor may inquire about the following information, but only if such information is requested of all applicants:

- i) number and ages of an applicant's dependents;
- ii) dependent-related financial obligations (e.g., medical and educational expenses attributable to the applicant's responsibility for a dependent);
- iii) applicant's liability to pay maintenance or child support;

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- iv) income from maintenance or child support, only if applicants are notified they need not disclose such income if they do not want it considered in evaluating their creditworthiness;
- v) any account upon which the applicant is liable and the name(s) and address(es) in which the account is carried;
- vi) names in which the applicant has previously received credit;
- vii) whether any obligation disclosed by the applicant has a co-obligor; and
- viii) the ownership of assets upon which the applicant relies when applying for credit.

B) Impermissible Inquiries.

- i) If the application is for individual unsecured credit and the applicant does not reside in a community property state, the creditor may not request the applicant's marital status; otherwise, the applicant may be required to disclose marital status from among "Married", "Unmarried", and "Separated", and the creditor may explain that "Unmarried" applies to single, divorced and widowed persons--A creditor may not request information regarding an applicant's childbearing capacity or intentions, or birth control practices--A creditor may, however, inquire about the number and ages of an applicant's dependents, about dependent-related financial obligations (e.g., medical and educational expenses attributable to the applicant's responsibility for a dependent), and about the applicant's liability to pay alimony or child support, if such information is requested uniformly of all applicants without regard to sex or marital status or any other prohibited characteristic--A creditor may request the sex and marital status of an applicant in connection with an application for credit insurance for purposes of determining the conditions on which such insurance may be available to the applicant--A creditor may also request the marital status of an applicant for the limited purpose of ascertaining its rights and remedies regarding repayment.

- ii) 4) Spousal Information: A creditor may not only request information concerning an applicant's spouse or former spouse (referred to in this subsection (b)(4)(B)(ii) as "person") to the extent that such information may be requested about an applicant if, unless the person spouse will be permitted to use the account or will be contractually liable upon it;



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the person will be contractually liable for the spouse's income or on alimony or kindred payments for separate maintenance or child support from the person spouse to repay the indebtedness; or if the applicant resides in, or property securing the indebtedness is located in, a community property state. The applicant may then be required to disclose marital status from among "Married", "Unmarried" and "Separated", and the creditor may explain that "Unmarried" applies to single, divorced and widowed individuals B) Where any of the above criteria is satisfied the creditor may request information regarding the applicant's spouse only to the extent that such information may be requested about an applicant under this Section.

5) Source of income. A creditor shall advise applicants, before inquiring generally into their available income, that they need not disclose income derived from alimony, child support or separate maintenance payments if they do not desire that income considered in evaluating their creditworthiness. This advice is not required, however, if the terms of the inquiry are sufficiently specific to focus exclusively on employment income as to reasonably preclude disclosure of alimony, child support or separate maintenance. A creditor may inquire whether any of an applicant's listed income is derived from a public assistance program to evaluate the likelihood of continuation and future reliability of those payments, and to ascertain its rights and remedies regarding repayment, if the inquiry is made uniformly of all applicants without regard to a prohibited characteristic.

5) 6) Handicap. A creditor may not inquire whether an applicant has a handicap. However, if any income listed by the applicant is derived from disability or public assistance benefits paid because of occasioned by a handicap, however, the creditor may request information regarding the nature and duration of the handicap condition for purposes of evaluating the probable continuation and future reliability of that income. A creditor may also inquire into an applicant's physical condition in connection with an application for credit insurance to determine the conditions on which such insurance may be available to the applicant.

(Source: Amended at 22 Ill. Reg. 6653, effective MAR 27 1998)

a) The exemption in Section 4-104(B)(2) of the Act [775 ILCS 5/4-104(B)(2)] at Befinition: i) An empirically derived credit system is a credit scoring system which evaluates an applicant's creditworthiness primarily by assigning points for by using a comparable basis for assigning weights to key attributes describing the applicant and other aspects of the transaction in such a system the points for weights assigned to each attribute and hence the entire score A) are derived from an empirical comparison of sample groups or the population of creditworthy and non-creditworthy applicants of a creditor who applied for credit within a reasonable preceding period of time, and B) determine alone or in conjunction with an evaluation of additional information about the applicant whether an applicant is deemed creditworthy. 2) The reasonableness of the time period from which comparisons are drawn must be determined by balancing consistently with accepted statistical principles, the objective of maximizing sample size against the objective of minimizing contamination from state data. b) Exemption. i) Section 4-104(B)(2) of the Act provides that a financial institution or credit card issuer is not precluded from using any empirically derived credit system which considers age if such system is demonstrably and statistically sound in accordance with regulations of the Department except that in the operation of such system the age of an applicant over the age of 62 years may not be assigned a negative factor or value. 2) Note that this provision does not authorize the consideration of any prohibited characteristic other than age under an empirically derived credit system, and allows for the consideration of age only if where the system is demonstrably and statistically sound. A system shall be deemed "demonstrably and statistically sound" if e) Meaning of "Demonstrably and Statistically Sound." An empirically derived credit system shall be deemed "demonstrably and statistically sound" only where each of the following standards is satisfied:

- 1) Data Base. The data used in developing the system, if not consisting of the complete population of all credit applicants, must be drawn from the file of credit applicants using accepted statistical sampling principles.
- 2) Purpose. The system must be developed with the purpose of predicting positively the actual creditworthiness of applicants.
- 3) Validation. The system must be validated, according to accepted statistical principles, as distinguishing between creditworthy and non-creditworthy applicants at a statistically significant rate.
- 4) Revalidation. The system must be periodically revalidated as to its predictive ability using appropriate statistical principles, and be adjusted as necessary to maintain its predictive ability.

b) 4) Use of Data from Other Creditors. A creditor may adopt a credit system used by another creditor, or use data from another creditor in developing its own system, as long as the system otherwise meets the

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requirements of paragraphs--(a)--and--(c)--of this Section. If the creditor is unable during the development process to validate the system based on its own credit experience in accordance with subsection (a)(3) subparagraph--(c)--of this Section, it must so validate the system as soon after implementation as sufficient credit experience becomes available. If the system fails this validity test, its use must immediately be suspended.

(Source: Amended at 22 Ill. Reg. effective 66593, MAR 27 1998)

Section 800.60 Special Purpose Credit Programs

a) Exemption:

- 1) Section 4-104(e) of the Act provides that a financial institution is not precluded from refusing to extend credit to an applicant when required to do so by or pursuant to
- A) a credit assistance program expressly authorized by law for an economically disadvantaged class of persons; or
- B) a credit assistance program administered by a non-profit organization for its economically disadvantaged members; or
- C) a special purpose credit program offered by a profit-making organization to meet special social needs which meets standards prescribed by the Department in its regulations.
- 2) The following standards apply to this last class of special purpose credit programs:--it should be noted that the exemption respecting them applies only to programs offered by financial institutions and not by credit card offerors and that it sanctions a refusal of credit which would otherwise violate the Act only where the refusal is actually required under the program.

a) Requisite Standards. A special purpose credit program is exempt from coverage of the Act sanctioned under Section 4-104(C)(3) of the Act [775 ILCS 5/4-104(C)(3)] only if it satisfies each of the following requirements:

- 1) Written Plan. The program is established and administered pursuant to a written plan which both identifies the classes of persons it is designed to benefit and sets forth the procedures and standards for extending whereby credit will be extended under it.
- 2) Class Benefiting. The program is established and administered to extend credit to a class of persons who, under the standards of creditworthiness customarily used by the lender, either would probably not receive such credit or would receive it on probably less favorable terms (e.g., at a higher interest rate, or for a shorter period, or with larger security required, or the like) than are ordinarily than those available to other applicants for

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similar types and amounts of credit.

3) Nondiscrimination. The program is established and administered so as not to discriminate against applicants on the basis of any characteristic prohibited under the Act, except to the extent that the class of persons benefiting from the program may be required to share one or more such characteristic(s) and that requirement is not a subterfuge for evading the purposes of the Act.

b) Inquiries into Common Characteristics. If a special purpose credit program meeting the requirements of this Section is established to benefit a class of persons sharing one or more characteristic(s) prohibited under the Act, the lender may inquire of any applicant for credit under that program regarding such prohibited characteristic(s), notwithstanding the provisions of Section 800.40 of this Part these regulations.

c) Inquiries into Financial Need. If financial need is one of the criteria for the extension of credit under a special purpose credit program meeting the requirements of this Section, the lender may inquire of applicants for credit under the program regarding marital status, spousal income and income from alimony, child support or separate maintenance, notwithstanding the provisions of Section 800.40 of this Part these regulations.

(Source: Amended at 22 Ill. Reg. effective 66593, MAR 27 1998)

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- h) Section 5421.20, change "16.3" to "5-16.3" in the definition of Health Care Plan.
- i) Section 5421.20, delete "Illinois Insurance Code [215 ILCS 125/4-17]" and add "Act" after "Section 4-17" in the definition of Health Care Plan.
- j) Section 5421.20, strike definition of Health Care Services and add same definition in italics.
- k) Section 5421.20, change "21" to "22" in the Section Source Note.
- l) Section 5421.110(a), strike "thirty-one" and add "31".
- m) Section 5421.110(c), strike "co-payments" and add "copayments".
- n) Section 5421.110(e), strike "Section" and add "Sections".
- o) Section 5421.110(m), strike "ten (10)" and add "10".
- p) Section 5421.110(m), strike "thirty-one (31)" and add "31".
- q) Section 5421.110(n), strike "State" and add "State".
- r) Section 5421.110(o), strike "a" before "HMO" and add "an".
- s) Section 5421.110(o), strike "of" and add "after".
- t) Section 5421.110(p), strike "Fifteen" and add "15".
- u) Section 5421.110(t)(1), strike "HMO's" and add "HMOs"; add a comma after "required".
- v) Section 5421.110(v)(6), add "(v)" before "(4)(C)".
- w) Section 5421.110, change "21" to "22" in the Section Source Note.
- x) Section 5421.111(a)(5), change the period to "; or".
- y) Section 5421.111, change "21" to "22" in the Section Source Note.
- z) Section 5421.131(a)(1), delete comma after "for".
- aa) Section 5421.131(a)(1)(A), change the semicolon to a colon.
- bb) Section 5421.131(a)(1)(A)(iii), add "this" before "Section" and delete "5421.131 of this Part".

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- 1) Heading of the Part: Health Maintenance Organization
- 2) Code Citation: 50 Ill. Adm. Code 5421
- 3) Section Number: Adopted Action:  
5421.20 Amendment  
5421.110 Amendment  
5421.111 Amendment  
5421.131 New Section
- 4) Statutory Authority: Implementing and authorized by Sections 4-17, 5-2 and 5-7 of the Health Maintenance Organization Act [215 ILCS 125/4-17, 5-2 and 5-7](see P.A. 90-0376 effective August 14, 1997).
- 5) Effective Date of Amendments: March 31, 1998
- 6) Does this amendment contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) Date filed in Agency's Principal Office: March 31, 1998
- 9) Notice of Proposal Published in Illinois Register: December 1, 1997, 21 Ill. Reg. 15086
- 10) Has JCAR issued a Statement of Objections to this amendment? No
- 11) Difference(s) between proposal and final version:
  - a) In Section 5421.20, add a closing bracket after "1-1", change ", as amended by" to ("see" and add a closing parenthesis after "1997".
  - b) In Section 5421.20, strike the closing bracket.
  - c) In Section 5421.20, strike the definition of Advertisement and add same definition in italics.
  - d) In Section 5421.20, add "see" after the opening parenthesis at the end of the definitions of Basic Health Care Services and Director.
  - e) In Section 5421.20, strike the definition of Enrollee and add same definition in italics.
  - f) In Section 5421.20, strike the definition of Group Contact and add same definition in italics.
  - g) Section 5421.20, add "see" after the opening parenthesis in the definition of Health Care Plan.



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- cc) Section 5421.131(a)(1)(A)(iii), add "partnership or traditional" before "long-term care".
- dd) Section 5421.131(a)(2), delete "Part" and add "Section".
- ee) Section 5421.131(b)(1), delete the comma.
- ff) Section 5421.131(b)(1), add a comma after "population".
- gg) Section 5421.131(b)(1), add a comma after "to".
- hh) Section 5421.131(b), delete the comma after "services".
- ii) Section 5421.131(b)(3), delete "and".
- jj) Section 5421.131(c), change "basic health care services" to "Basic Health Care Services".
- kk) Section 5421.131(c), add "Basic Health Care Services" after "Supplemental".
- ll) Section 5421.131(c), change "supplemental" to "Supplemental".
- mm) Section 5421.131(c), change "include" to "includes" add "any services listed in Section 5421.130 of this Part. To the extent that Supplemental Basic Health Care Services are provided under this subsection, the minimum requirements of Section 5421.130 of this Part must be met for those services." and delete ", but are not limited to the following:".
- nn) Section 5421.131, add "d) Supplemental Services which may be provided in addition to Basic Outpatient Preventive and Primary Health Care Services for Children."
- oo) Section 5421.131(d), add "In addition to the Supplemental Basic Health Care Services provided in Section 5421.131(c) of this Section, the HMO may offer the following Supplemental Services:" Add all remaining text from Lines 628-631.
- pp) Section 5421.131(c)(4), delete all text.
- qq) Section 5421.131(e), change "d)" to "e)" and change semi-colon to a period after "drugs".
- rr) Section 5421.131(e), add "Supplemental Basic Health Care Services" after "Primary Health Care Services".
- ss) Section 5421.131(e), add a comma after "when".

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- ww) Section 5421.131(e), delete "Nothing within" and add "This subsection", delete "shall" and add "does not".
- tt) Section 5421.131(e), add "and missed appointments" after "funds".
- uu) Section 5421.131(f), change "e)" to "f)".
- vv) Section 5421.131(f)(1), delete "subsection" and add "Section".
- ww) Section 5421.131(f)(1)(A), add a comma after "certificate".
- xx) Section 5421.131(f)(1)(A), delete "a prominent statement".
- yy) Section 5421.131(f)(1)(B) and (C), change the semicolon to a period.
- zz) Section 5421.131(f)(1)(D), add "the" before "HMO".
- aaa) Section 5421.131(f)(2), delete "supplemental" and add "under this Section" after "offered".
- bbb) Section 5421.131(f)(1)(D), add a comma after "director".
- ccc) Section 5421.131(g), change "f)" to "g)".
- ddd) Section 5421.131(g), add "50 Ill. Adm. Code 916" change "approved" to "accepted" and add "in accordance with the requirements of Sections 4-17 of the Act" after "Director".
- eee) Section 5421.131(h), change "g)" to "h)" and change "Section" to "Part".
- fff) Section 5421.131(h), change "5421.110m" to "5421.110(m)".
- ggg) Section 5421.131(h), change "granted" to "given".
- hhh) Section 5421.131, change "21" to "22" in the Section Source Note.
- 12) Have all changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes, with the exception of numbers 31, 33 and 35 of the Second Notice changes document.
- 13) Will this amendment replace an emergency rule currently in effect? Yes
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of rulemaking: These amendments set forth regulatory standards pursuant to P.A. 90-0376 which authorizes Health Maintenance Organizations to make basic outpatient preventive and primary health care

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services available to children under the age of 19 who are otherwise unable to obtain health care benefits.

- 16) Information and questions regarding this adopted amendment shall be directed to:

Mary Petersen  
Department of Insurance  
320 West Washington  
Springfield, IL 62767-0001  
217-524-4051

The full text of the Adopted Amendment begins on the next page.

## DEPARTMENT OF INSURANCE

## NOTICE OF ADOPTED AMENDMENTS

TITLE 50: INSURANCE  
CHAPTER I: DEPARTMENT OF INSURANCE  
SUBCHAPTER kkk: HEALTH SERVICE PLANS

## PART 5421

## HEALTH MAINTENANCE ORGANIZATION

Section	
5421.10	Scope
5421.20	Definitions
5421.30	Valuation of Investments
5421.40	Grievance Procedure
5421.50	Contracts, Administrative Arrangements and Material Modifications
5421.60	Rates
5421.70	Subordinated Indebtedness
5421.80	Financial Reporting
5421.90	Conflict of Interest and Required Disclosure
5421.100	Solicitation
5421.110	Requirements for Group Contracts, Evidences of Coverage and Individual Contracts
5421.111	Cancellation
5421.112	Form Filing Requirements
5421.113	Point of Service Plan Requirements
5421.120	Internal Security Standards and Fidelity Bonds
5421.130	Basic Health Care Services
5421.131	Basic Outpatient Preventive and Primary Health Care Services for Children
5421.140	General Provisions
5421.141	HMO Producer Licensing Requirements
5421.142	Limited Insurance Representative Requirements - Public Aid and Medicare Enrollers
5421.150	Severability
5421.160	Effective Date (Repealed)

AUTHORITY: Implementing and authorized by Sections 4-17, 5-2 and 5-7 of the Health Maintenance Organization Act [215 ILCS 125/4-17, 5-2 and 5-7] (see P.A. 90-0376, effective August 14, 1997).

SOURCE: Filed June 16, 1976, effective July 1, 1976; codified at 7 Ill. Reg. 3016; amended at 15 Ill. Reg. 199, effective December 28, 1990; amended at 20 Ill. Reg. 10639, effective July 25, 1996; recodified at 21 Ill. Reg. 1729; emergency amendment at 21 Ill. Reg. 15262, effective November 18, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 674, effective

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## Section 5421.20 Definitions

Act means the Health Maintenance Organization Act [215 ILCS 125/1-1]

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(see P.A. 90-376, effective August 14, 1997) et seq., hereinafter referred to as the "Act".

Advertisement means any printed or published material, audiovisual material and descriptive literature of the health care plan used in direct mail, newspapers, magazines, radio scripts, television scripts, billboards and similar displays; and any descriptive literature or sales aids of all kinds disseminated by a representative of the health care plan for presentation to the public including, but not limited to, circulars, leaflets, booklets, depictions, illustrations, form letters and prepared sales presentations Advertisement means any printed or published material, audiovisual material and descriptive literature of the health care plan used in direct mail, newspapers, magazines, radio scripts, television scripts, billboards and similar displays; and any descriptive literature or sales aids of all kinds disseminated by a representative of the health care plan for presentation to the public including, but not limited to, circulars, leaflets, depictions, illustrations, form letters, booklets, depictions, illustrations, form letters and prepared sales presentations (Section 1-2(1) of the Act).

Base Rates means the rate generated before any classification deviations are applied.

Basic Health Care Services means emergency care, and inpatient hospital and physician care, outpatient medical services, mental health services and care for alcohol and drug abuse, including any reasonable deductibles and co-payments, all of which are subject to such limitations as are set forth in this Part (see Section 1-2(3) of the Act).

Cancellation means the termination of a group contract, evidence of coverage or individual contract by an HMO prior to the expiration date of the group contract, evidence of coverage or individual contract.

Consumer means any enrollee, provided that such individual is not or has not been in the previous two years: an employee (including his spouse or dependent) of the HMO or affiliate of the HMO; or a provider furnishing health care services to the HMO or affiliate of the HMO.

Copayment means the amount an enrollee must pay in order to receive a specific covered service which is not fully prepaid.

Deductible means the amount an enrollee is responsible to pay out-of-pocket before the HMO begins to pay the costs associated with treatment.

Department mean the Illinois Department of Insurance.

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Department of Insurance Complaint means a written complaint filed by or on behalf of an enrollee, with the Department pursuant to Section 4-6 of the Act [215 ILCS 125/4-6], excluding complaints filed by Illinois Department of Public Aid HMO members under Section 5-11 [305 ILCS 5/5-11] and complaints subject to handling by the Health Care Financing Administration pursuant to a contract entered into between the Health Care Financing Administration and the HMO.

Director means the Director of the Illinois Department of Insurance (see Section 1-2(2) of the Act).

Enrollee means an individual who has been enrolled in a health care plan. Enrollee means an individual who has been enrolled in a health care plan. (Section 1-2(4) of the Act).

Evidence of Coverage means any certificate, agreement, or contract issued to enrollees setting out the coverage to which they are entitled in exchange for a per capita prepaid sum (Section 1-2(5) of the Act).

Governing Body means the Board of trustees, or directors, or if otherwise designated in the basic organizational document bylaws, those individuals vested with the ultimate responsibility for the management of any organization that has been issued, or is applying for, a certificate of authority as an HMO.

Grievance means any written complaint submitted to the HMO by or on behalf of an enrollee regarding any aspect of the HMO relative to the enrollee, but shall not include any complaint by or on behalf of a provider.

Grievance Committee means individuals who have been appointed by the HMO to respond to grievances which have been filed on appeal from the HMO's simplified complaint process established pursuant to Section 5421.40(d) of this Part. At least 50 % of the individuals on this committee shall be composed of enrollees who are consumers.

Group Contract means a contract for health care services which by its terms limits eligibility to members of a specified group. Group Contract means a contract for health care services which by its terms limits eligibility to members of a specified group (Section 1-2(6) of the Act).

Health Care Plan means any arrangement whereby any organization undertakes to provide or arrange for and pay for or reimburse the cost of any basic health care services from providers selected by the HMO and such arrangement consists of arranging for or the provision of such health care services, as distinguished from mere indemnification



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against the cost of such services, except as otherwise authorized by Section 2-3 of the Act, on a per capita prepaid basis, through insurance or otherwise (see Section 1-2(7) of the Act). A health care plan also includes any arrangement whereby an organization undertakes to provide, or arrange for, or pay for, or reimburse the cost of any health care services for persons who are enrolled in the integrated health care program established under Section 5-16.3 of the Illinois Public Aid Code [305 ILCS 5/5-16.3] through providers selected by the organization and the arrangement consists of making provision for the delivery of health care services, as distinguished from mere indemnification. A health care plan also includes any arrangement pursuant to Section 4-17 of the Act [215 ILCS 125/4-17]. Nothing in the definition of Health Care Plan, however, affects the total medical services available to persons eligible for medical assistance under the Illinois Public Aid Code.

Health Care Services means any services included in the furnishing to any individual of medical or dental care, or the hospitalization or incident to the furnishing of such care or hospitalization as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness or injury Health-Care--Services--means--any--services--included--in--the--furnishing--to--any--individual--of--medical--or--dental--care--or--the--hospitalization--or--incident--to--the--furnishing--of--such--care--or--hospitalization--as--well--as--the--furnishing--to--any--person--of--any--and--all--other--services--for--the--purpose--of--preventing--alleviating--curing--or--healing--human--illness--or--injury (Section 1-2(8) of the Act).

HMO means Health Maintenance Organization.

Individual Contract means a contract for health care services issued to and covering an individual. The individual contract may include dependents of the subscriber.

Limited Insurance Representative means an individual appointed by an HMO to represent the HMO in the enrollment of recipients of Public Aid or Medicare in the HMO.

Managed Care Organization (MCO) means a partnership, association, corporation or other legal entity, including but not limited to individual practice associations (IPAs) and Physician Hospital Organizations (PHOs), which delivers or arranges for the delivery of health care services through providers it has contracted with or otherwise made arrangements with to furnish such health care services.

Notice of Availability of the Department as required by this Part shall be no less informative than the following:

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The regulations of the Illinois Department of Insurance (50 Ill. Adm. Code 5421.110(n) 100) requires that we advise you that if you wish to take this matter up with the Illinois Department of Insurance it maintains a Consumer Division in Chicago at 100 W. Randolph Street, Suite 15-100, Chicago, Illinois 60601-3251 and in Springfield at 320 West Washington Street, Springfield, Illinois 62767-0001.

Point of Service Plan means a plan in which an eligible enrollee is covered under both an HMO evidence of coverage and an indemnity insurance policy or certificate and may select, on a point of service basis, between using the HMO or the indemnity benefit program. Under such a plan enrollees, at their option, may obtain health-care services, including but not limited to basic health-care services as defined in Section 1-2(3) of the Act (215 ILCS 125/1-2(3)) and Section 5421.130 of this Part outside the HMO's provider network.

Primary Care Physician means a provider who has contracted with an HMO to provide primary care services as defined by the contract and who is:

a physician licensed to practice medicine in all of its branches who spends a majority of clinical time engaged in general practice of internal medicine, pediatrics, gynecology, obstetrics or family practice, or

a chiropractic physician licensed to treat human ailments without the use of drugs or operative surgery (77 Ill. Adm. Code 240.2).

Producer means a person directly or indirectly associated with a health care plan who engages in solicitation or enrollment (see Section 1-2(13) of the Act).

Provider means any physician, hospital facility, or other person which is licensed or otherwise authorized to furnish health care service and also includes any other entity that arranges for the delivery or furnishing of health care services (Section 1-2(12) of the Act).

Renewal means the issuance and delivery by an HMO of a group contract or individual contract superseding at the end of the contract period a contract previously issued and delivered by the same HMO or the issuance and delivery of a certificate or notice extending the term of the group or individual contract beyond its contract term.

Solicitation means any method by which information relative to an HMO is made known to the public for the purpose of informing or influencing potential enrollees to enroll in a Health Care Plan, regardless of the media or technique used.

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excepted. Such exceptions, exclusions or limitations shall appear with the same prominence in the group contract, evidence of coverage and individual contract as any benefit.

- c) The group contract, evidence of coverage, and individual contract shall set forth a detailed statement of the terms and conditions of maternity benefits and any related exceptions, exclusions, limitations, copayments co-payments and deductibles. Such exceptions, exclusions, limitations, copayments co-payments and deductibles applicable to prenatal and post-natal care shall be covered no differently than any other covered health care services provided pursuant to the contract, with the exception of a limitation for coverage of routine prenatal care or delivery when the enrollee is outside the service area against medical advice, except when the enrollee is outside of the service area due to circumstances beyond her control, may be included in the group contract and evidence of coverage.
- d) Entire Contract. The group contract, evidence of coverage and individual contract shall contain a statement that the group contract evidence of coverage and individual contract, all applications, and any amendments thereto shall constitute the entire agreement between the parties. No portion of the charter, by-laws or other document of the HMO shall be part of such a contract or evidence of coverage unless set forth in full in such document or attached thereto.
- e) Eligibility Requirements. The group contract, evidence of coverage and individual contract shall contain eligibility requirements indicating the conditions that must be met to enroll in a health care plan, the limiting age for enrollees and eligible dependents including the effects of Medicare eligibility, and a clear statement regarding coverage of newborn children as set forth in Sections Section 4-8 and 4-9 of the Act.
- f) Benefits and Services Within the Service Area. The group contract, evidence of coverage and individual contract shall contain a specific description of coverage and individual contract shall contain a specific description of benefits and services available within the HMO's designated service area.
- g) Emergency Care Services. The group contract, evidence of coverage and individual contract shall contain a specific description of benefits and services available for emergencies 24-hours a day, 7 days a week, including disclosure of any restrictions on emergency care services. No group contract or evidence of coverage shall limit the coverage of emergency services within the service area to those providers having a contract with the HMO.
- h) Out of Area Benefits and Services. The group contract, evidence of coverage and individual contract shall contain a specific description of benefits and services available out of the HMO's designated service area.
- i) Deductibles and Copayments. An HMO may require copayments of enrollees as a condition for the receipt of specific health care services. Deductibles and copayments shall be the only allowable

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State means any governing body, department, or agency of the State of Illinois which has regulatory authority governing the Act.

Subscriber means a person who has entered into a contractual relationship with the HMO for the provision of or arrangement of at least Basic Health Care Services to the beneficiaries of such contract (Section 1-2(15) of the Act).

Supplemental Health Care Services means any health care service other than basic health care services.

Usual and Customary Fee shall mean the fee as reasonably determined by the HMO that is based on the fee which the provider who renders the service usually charges its patients for the same service and the fee is within the range of usual fees other providers of similar type, training and experience in a similar geographic area charge their patients for the same service, under similar or comparable circumstances.

(Source: Amended at 22 Ill. Reg. 6681, effective 10/12/91 1998)

#### Section 5421.110 Requirements for Group Contracts, Evidences of Coverage and Individual Contracts

- a) Any group contract, evidence of coverage, individual contract, enrollee handbook, enrollment application, identification card or other form which affects the terms and conditions applicable to the subscriber or enrollee in the provision of health care services must be filed with and approved by the Director prior to use in accordance with the requirements of Section 5421.112 of this Part and Section 4-13 of the Act. The HMO shall issue to each subscriber or enrollee a group contract, evidence of coverage, or individual contract. Any conflicting information between the valid current document referenced above issued to the subscriber or enrollee and the current group contract shall be interpreted according to whichever is most beneficial to the subscriber or enrollee. Any such group contract, evidence of coverage, or individual contract shall provide for the rendering of health care services as defined therein for either a specific period of not less than twelve months from the date of issuance or for such period as is otherwise mutually agreed to by the HMO and the group or individual contract holder; and shall provide for renewal on a basis mutually agreed to by both parties, unless the HMO has given 31 thirty-one days written notice of nonrenewal prior to the renewal date of the contract.

- b) A detailed statement of any exceptions, exclusions or limitations shall be set forth in the group contract, evidence of coverage, and individual contract for any type of health care service to be



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charge, other than premiums, assessed enrollees. Copayments shall be for a specific dollar amount. Deductibles shall be either for a specific dollar amount or for a specific percentage of the cost of the health care service. No single deductible or copayment for basic health care services may exceed 50% of the usual and customary fee of the service to the HMO and must be waived when in a calendar year, deductibles and copayments paid for the receipt of basic health care services exceed \$1500 per enrollee, or \$3000 per family. Deductibles and copayments applicable to supplemental health care services or pre-existing conditions are not subject to this annual limitation. Nothing within this subsection shall preclude the provider from charging reasonable administrative fees such as service fees for checks returned for non-sufficient funds and missed appointments.

j) Pre-existing Conditions. An HMO may impose deductible and copayment pre-existing condition limitations as a condition to receiving health care services. A pre-existing condition shall not be defined more restrictively than a condition for which medical advice or treatment was recommended by a physician or received from a physician within a one year period preceding the effective date of coverage under the health care plan or the existence of symptoms which, in the opinion of a legally qualified physician, would have caused an ordinarily prudent person to seek diagnosis, care or treatment within a one year period preceding the effective date of coverage under the health care plan. Such condition may only be limited for a period not to exceed one year from the effective date of coverage.

k) Cancellation. The group contract, evidence of coverage, and individual contract shall contain the conditions upon which cancellation may be effected by the HMO or the enrollee as set forth in Section 5421.111 of this Part.

l) Reinstatement. The group contract, evidence of coverage, and individual contract shall contain the conditions of the enrollee's right to reinstatement.

m) Grace Period. A group contract or individual contract shall provide for a grace period for the payment of any premium, except the first, during which coverage shall remain in effect if payment is made during the grace period. The grace period for a group contract shall not be less than 10 ten-ti0 days. The grace period for an individual contract shall not be less than 31 thirty-one-t31 days. During the grace period, the HMO shall remain liable for providing the services and benefits contracted for; the subscriber shall remain liable for the payment of the premium for the time coverage was in effect during the grace period and the enrollee shall remain liable for the payment of any applicable share of the premium, for the time coverage was in effect, as well as for any copayments owed.

n) No group contract, or evidence of coverage, or individual contract may be delivered in this State state unless the subscriber and/or enrollee is provided written notice required by Section 143c of the Illinois Insurance Code [215 ILCS 5/143c].

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o) Right to Examine Contract. An individual contract, with the exception of an HMO Medicare contract entered into between the Health Care Financing Administration and the HMO under Title XVIII of the Social Security Act, as amended from time to time, shall contain a provision stating that an enrollee who has entered into an agreement with an HMO shall be permitted to return the individual contract within ten days after receiving it and to receive a refund of the premium paid if the enrollee is not satisfied with the contract for any reason. If the individual contract is returned to the HMO or to its representative through whom it was purchased, it is considered void from the beginning. However, if services are rendered or claims are paid for such enrollee or dependent by the HMO during the ten-day examination period, the enrollee shall not be permitted to return the contract and receive a refund of the premium paid.

p) An HMO Medicare contract entered into between the Health Care Financing Administration and the HMO under Title XVIII of the Social Security Act, as amended from time to time, shall be delivered to the enrollee at least 15 fifteen days prior to the effective date of the contract. The enrollee shall be permitted to return the HMO Medicare contract prior to the effective date and to receive a refund of the premium paid if the enrollee is not satisfied with the contract for any reason, provided the enrollee complies with the disenrollment procedures of Title XVIII of the Social Security Act, as amended from time to time.

q) Every HMO will provide to every enrollee of the HMO information which generally describes the philosophy, functions and organization of the HMO and related institutions, and specific information which describes the appropriate use of the HMO's services, including a general description of benefits and limitations. The HMO shall include in its enrollee information a description of the HMO's grievance procedure, directions for filing a grievance, and "Notice of Availability of the Department."

r) Every HMO shall provide to every enrollee of the HMO an identification card which must prominently display the following information:

- 1) the words "Health Maintenance Organization" or "HMO"; and
  - 2) disclaimer language concerning an enrollee's unauthorized use of providers not selected by the HMO; and
  - 3) a current telephone number for the enrollees to use when health care services are required outside of normal office hours.
- s) Enrollment Application. No individual contract shall be issued except upon the signed enrollment application of the enrollee for whom coverage is being sought. Any information or statement of the applicant shall appear on such application in the form of interrogatories by the HMO and answers by the applicant. The enrollee shall not be bound by any statement made within an application for health care coverage unless a copy of such application is attached to the individual contract. Group enrollment applications must be maintained on file by the HMO; otherwise, disputes arising from



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statements made within such applications will be resolved in the enrollee's favor. Except for those instances involving fraud or material misrepresentation, an HMO's failure to investigate incomplete or conflicting answers on an enrollment application, shall estop the HMO from subsequently denying coverage on the basis of such responses.

## t) Coordination of Benefits.

1) HMOs HMOs are permitted, but not required, to adopt coordination of benefits provisions to avoid over insurance and to provided for the orderly payment of claims when a person is covered by two or more group health insurance or health care plans.

2) If an HMO adopts coordination of benefits, the provision must be consistent with the coordination of benefits requirements set forth in 50 Ill. Adm. Code 2009.

3) To the extent necessary for an HMO to meet its obligations as a secondary carrier under 50 Ill. Adm. Code 2009, and where an enrollee has established a credit within the reserve bank, the HMO shall make payments for services that are:

- A) received from non-participating providers; or
- B) provided outside their services areas; or
- C) not covered under the terms of health care plan.

u) Dependents-termination of coverage-disability and dependency, proof-application. Every group contract, evidence of coverage, or individual contract which provides that coverage of a dependent person of an enrollee shall terminate upon attainment of the limiting age for dependent persons shall comply with the requirements of Section 4-9.1 of the Act.

## v) Conversion of coverage.

1) The group contract and evidence of coverage shall contain a conversion provision which provides that each enrollee has the right to convert coverage to an individual or group HMO contract in the following circumstances:

- A) upon cancellation of eligibility for coverage under a group contract,
- B) upon cancellation of the group contract, or
- C) upon non-renewal of the group contract.

2) The conversion contract shall cover the enrollee and his/her eligible dependents who were covered by the group contract on the date of cancellation or non-renewal of coverage. To obtain the conversion contract, an enrollee shall submit a written application and the application premium payment within 31 days after the date the enrollee's coverage is cancelled.

3) The HMO may require copayments and deductibles under a conversion contract that differ from the group contract.

4) A conversion contract shall not be required to be made available if:

- A) The cancellation of the enrollee's coverage occurred for any of the reasons listed in Section 5421.111(a) of this Part;

or

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B) The enrollee is covered by or is eligible for benefits under Title XVIII of the United States Social Security Act; or

C) The enrollee is covered by similar hospital, medical, or surgical benefits under state or federal law; or

D) The enrollee is covered by similar hospital, medical, or surgical benefits under any arrangement of coverage for individuals in a group whether on an insured or uninsured basis; or

E) The enrollee is covered for similar benefits through individual coverage; or

F) The enrollee has not been continuously covered during the three-month period immediately preceding cancellation of that person's coverage; or

G) The enrollee has moved outside of the service area of the health maintenance organization; or

H) The cancellation of the enrollee's coverage occurred in relation to the HMO being placed in rehabilitation or liquidation proceedings pursuant to Section 5-6 of the Act; or

I) The group contract has been discontinued in its entirety and there is a succeeding carrier providing coverage to the group in its entirety.

5) Benefits or coverage shall be considered "similar" if coverage is provided for at least 12 months under comprehensive type medical coverage.

6) Notwithstanding subsection (v)(4)(C), (D), (E), or (F) above, if the enrollee or any of his or her covered dependents has a pre-existing condition, and the enrollee is covered by similar hospital, medical or surgical benefits under any arrangement of coverage for individuals in a group, whether on an insured or uninsured basis, and such coverage does not cover pre-existing conditions, then such enrollee may continue conversion coverage for the individual with such pre-existing condition until the enrollee's or dependant's pre-existing condition is covered under the succeeding plan.

7) The conversion contract shall provide as a minimum to its enrollees basic health care services.

8) The conversion contract shall begin coverage of the enrollee and any dependents formerly covered under the group contract on the date of termination from the group or the former individual contract.

9) Coverage shall be provided without requiring evidence of insurability and shall not impose any pre-existing condition limitations or exclusions other than those remaining unexpired under the contract from which conversion is exercised.

10) Prior to the issuance of a conversion contract, the enrollee must be notified in writing that the election of any conversion contract will terminate the individual's federal eligibility for

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coverage under the Illinois Comprehensive Health Insurance Plan. Conversion charge shall be provided for a period of not less than 18 months:

- w) Discrimination between individuals of the same class in the terms and conditions of such health care plan, or in the amount charged for coverage under a health care plan except where the rate differential is based on sound actuarial principles, or in any other manner whatsoever is prohibited.

x) Grievance Procedure

The group contract, evidence of coverage, and individual contract shall set forth a full description of the HMO grievance procedure required by Section 5421.40 of this Part.

(Source: Amended at 22 Ill. Reg. 6742, effective MAR 31 1998)

## Section 5421.111 Cancellation

- a) No HMO shall cancel a group or individual contract or evidence of coverage except for one or more of the following reasons:

- 1) Failure of the enrollee to pay the amount due under the contract or evidence of coverage, for which the enrollee is legally responsible; or
- 2) Fraud or material misrepresentation in enrollment or in the use of services or facilities; or
- 3) Material violation of the terms of the contract or evidence of coverage; or
- 4) Failure of the enrollee and the primary care physician to establish a satisfactory patient-physician relationship if the enrollee has repeatedly refused to follow the plan of treatment ordered by the physician; it is shown that the HMO has in good faith provided the enrollee with the opportunity to select an alternative primary care physician; and the enrollee has been notified in writing at least 31 days in advance that the HMO considers such patient-physician relationship to be unsatisfactory; or
- 5) Under the Basic Outpatient Preventive and Primary Care Services for Children Program, failure to meet or continue to meet eligibility requirements as required by Section 5421.131 of this Part; or

6) Such other good cause agreed upon in the contract and approved by the Director pursuant to Section 4-13 of the Act.

- b) A group contract, evidence of coverage or individual contract may not be cancelled for any of the following reasons:

- 1) The status of the enrollee's health;
- 2) The enrollee has exercised his or her rights under the HMO's grievance system.

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(Source: Amended at 22 Ill. Reg. 6744, effective MAR 31 1998)

## Section 5421.131 Basic Outpatient Preventive and Primary Health Care Services for Children

a) Eligibility.

- 1) A health maintenance organization may undertake to provide or arrange for and to pay for or reimburse the cost of basic outpatient preventive and primary health care services for children in Illinois who:

A) are without health care coverage:

- i) through a parent's employment;
- ii) through failure to qualify for medical assistance under the Illinois Public Aid Code or failure to qualify for coverage under the State Children's Health Insurance Program of the Social Security Act as amended by the Balanced Budget Act of 1997, P.L. 105-33;
- iii) through any other health plan. For purposes of this Section, health plan means a policy, contract, certificate or agreement offered by a carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services. Health plan does not include accident-only, credit, dental, vision, Medicare supplement, partnership or traditional long-term care, or disability income insurance coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, or automobile medical payment insurance or short-term and catastrophic health insurance policies, or a policy that pays on a cost-incurred basis, or student insurance;
- iv) due to a loss of medical assistance when a parent has moved from welfare to work and does not find employment that offers health care coverage;

- B) are 18 years of age or under;

- C) have resided in the State of Illinois for at least 30 days and continue to reside in the State of Illinois.

- 2) Said coverage will be made available to an adult on behalf of an enrollee. For purposes of this Section, enrollee is defined as an eligible child on whose behalf the policy is purchased. The financially responsible party (FRP) is the person or entity paying the premium on behalf of the enrollee. The certificate and/or policy will be issued to the parent or legal guardian of the enrollee. If the FRP and parent or legal guardian are different, both shall be listed on the face page of the certificate and/or policy. The name of the enrollee shall also



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b) be listed on the face page of the certificate and/or policy.  
Required Basic Minimum Outpatient Preventive and Primary Health Care Services for Children to be provided. The following minimum standards shall meet the requirements for basic outpatient preventive and primary health care services to be provided under this subsection, provided that such services are medically necessary as determined by the enrollee's primary care physician, and if required by the HMO, are authorized on a prospective and timely basis by the HMO's medical director.

1) Preventive health services provided by the enrollee's primary care physician in the office, as appropriate for the patient population, including a health evaluation program and immunizations to prevent or arrest the further manifestation of human illness or injury including, but not limited to, allergy injections and allergy serum. Such health evaluation program shall include at least periodic physical examinations and medical history, blood pressure testing, and uterine cervical cytological testing as required by Section 356u of the Illinois Insurance Code [215 ILCS 5/356u] as well as health education concerning appropriate health care practices.

2) Basic or general physician services for illness or injury, provided by the enrollee's primary care physician in the office.

3) Emergency services for accidental injury or emergency illness 24 hours per day, 7 days per week. Such emergency services are covered benefits inside and out of the plan's service area.

c) Outpatient diagnostic x-rays and laboratory services provided, arranged or authorized by the enrollee's primary care physician. Supplemental Basic Health Care Services which may be provided in addition to Basic Outpatient Preventive and Primary Health Care Services for Children. In addition to the minimum required health services listed in subsection (b) above, the HMO may offer Supplemental Basic Health Care Services, provided that such services are medically necessary as determined by the enrollee's primary care physician, and if required by the HMO, are authorized on a prospective and timely basis by the HMO's Medical Director. Supplemental Basic Health Care Services includes any services listed in Section 5421.130 of this Part. To the extent that Supplemental Basic Health Care Services are provided under this subsection, the minimum requirements of Section 5421.130 of this Part must be met for those services.

d) Supplemental Services which may be provided in addition to Basic Outpatient Preventive and Primary Health Care Services for Children. In addition to the Supplemental Basic Health Care Services provided in Section 5421.131(c) of this Section, the HMO may offer the following Supplemental Services:

1) preventive dental services including diagnostic services, x-rays and restorations (fillings);

2) vision screening, including one pair of eyeglasses per year;

3) prescription drugs.

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e) Copayments, deductibles and benefit maximums for Basic Outpatient Preventive Services, Primary Health Care Services, Supplemental Basic Health Care Services and Supplemental Services for Children. An HMO may require copayments of enrollees as a condition for the receipt of specific health care services under this Part. Deductibles and copayments shall be the only allowable charge, other than premiums. Copayments shall be for a specific dollar amount. Deductibles shall be either for a specific dollar amount or for a specific percentage of the cost of the health care service. No single deductible or copayment for health services may exceed 25% of the usual and customary fee of the service to the HMO and must be waived when, in a calendar year, deductibles and copayments paid for the receipt of health care services exceed \$500 per enrollee. This subsection does not preclude the provider from charging reasonable administrative fees such as service fees for checks returned for non-sufficient funds and missed appointments.

f) Necessary Disclosure Requirements.

1) The policy or certificate issued under this Section shall prominently disclose all limitations, exclusions, copayments and deductibles. Such disclosure shall include, but is not limited to:

A) A prominent statement on the first page of the policy or certificate, in either contrasting color or in boldface type at least equal to the size of type used for policy captions, as follows:

"Notice to Buyer. This is a limited benefit (policy) (certificate). Benefits provided are not intended to cover all of your medical expenses."

B) Exclusion of inpatient hospital services.

C) Statement that pre-existing conditions may not be excluded or limited.

D) Exclusion of services which are not provided, arranged or authorized by the primary care physician, and if required by the HMO, are subject to authorization on a prospective and timely basis by the HMO's medical director, except for emergency services.

2) In the event services are offered under this Section by the HMO and purchased on behalf of the enrollee, full disclosure of the scope of those limited benefits shall be prominently stated within the policy or certificate.

3) Eligibility requirements shall be prominently disclosed in the policy or certificate.

4) Terms of cancellation shall be prominently disclosed pursuant to Section 5421.111 of this Part.

g) Advertising. All advertising materials used to market policies pursuant to 50 Ill. Adm. Code 916 and/or certificates pursuant to this Part shall be filed and accepted by the Director in accordance with the requirements of Section 4-17 of the Act prior to use.



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- h) Grace Period Extension. For purposes of this Part, the grace periods of Section 542l.110(m) of this Part apply. In the event an FRP, other than the parent or guardian, fails to pay the premium within the grace period, the parent or guardian will be so notified and be given an additional 30 days in which to pay the premium or obtain another FRP.

(Source: Added at 22 Ill. Reg. 6691, effective MAR 31 1998)

## DEPARTMENT OF INSURANCE

## NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Investment Fee Disclosure Requirements for Pension Funds
- 2) Code Citation: 50 Ill. Adm. Code 4430
- 3) Section Number: Adopted Action:  
4430.10 New Section  
4430.20 New Section  
4430.30 New Section  
4430.40 New Section
- 4) Statutory Authority: Implementing Sections 1-113.5(b)(3), (d) and (e) and also 1-113.6, and authorized by Section 1-113.11 of the Illinois Pension Code [40 ILCS 5/1-113.5(b)(3), (d) and (e), 1-113.6 and 1-113.11] (see P.A. 90-507, effective August 22, 1997).
- 5) Effective Date of rule: March 31, 1998
- 6) Does this rule contain an automatic repeal date? No
- 7) Does this rule contain incorporations by reference? No
- 8) Date filed in Agency's Principal Office: March 31, 1998
- 9) Notice of Proposal Published in Illinois Register: December 26, 1997, 21 Ill. Reg. 16946
- 10) Has JCAR issued a Statement of Objections to this rule? No
- 11) Difference(s) between proposal and final version:
- a) Section 4430.10 - On the third line add "1-"following "through".
- b) Section 4430.20 - On the second line delete "purposes" and add "purpose".
- c) Section 4430.20(b) - On the fifth line delete the semicolon and add a comma in lieu thereof.
- d) Section 4430.30(a) - On the sixth line delete "their" and add "its" in lieu thereof.
- e) Section 4430.30(b)(2) - On the first line delete the comma.
- f) Section 4430.30(b)(4) - On the first line delete the comma following "bank" and add "or" in lieu thereof. Also delete the comma following "brokerage".

DEPARTMENT OF INSURANCE  
NOTICE OF ADOPTED RULES

- 12) Have all changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? The Department has made all changes indicated on the Second Notice Changes document except number one.
- 13) Will this rule replace an emergency rule currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of rulemaking: Beginning January 1, 1998, police and firefighter pension funds established under either Article 3 or 4 of the Pension Code may not draw pension funds out for investment purposes. Pursuant to the requirements of this Part, pension funds must obtain a fee disclosure statement from any investment advisor, registered broker-dealer, bank, insurer or any other person used for investment-related services. This rule sets forth what elements must be contained in a disclosure statement and further identifies what recordkeeping requirements pension funds must meet to be in compliance with this Part.
- 16) Information and questions regarding this adopted rule shall be directed to:  
  
Jim Orr  
Department of Insurance  
320 West Washington  
Springfield, Illinois 62767-0001  
217/785-2162

The full text of the Adopted Rules begins on the next page.

DEPARTMENT OF INSURANCE  
NOTICE OF ADOPTED RULES

TITLE 50: INSURANCE  
CHAPTER I: DEPARTMENT OF INSURANCE  
SUBCHAPTER aaa: PENSIONS

PART 4430  
INVESTMENT FEE DISCLOSURE  
REQUIREMENTS FOR PENSION FUNDS

Section	Scope
4430.10	Required Disclosures
4430.20	Recordkeeping
4430.30	Penalties
4430.40	

AUTHORITY: Implementing Sections 1-113.5(b)(3), (d) and (e) and also 1-113.6 of, and authorized by Section 1-113.11 of, the Illinois Pension Code [40 ILCS 5/1-113.5(b)(3), (d) and (e), 1-113.6 and 1-113.11, as added by P.A. 90-507, effective August 22, 1997].

SOURCE: Emergency rules adopted at 21 Ill. Reg. 17154, effective December 16, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 6693, effective MAR 31 1998.

Section 4430.10 Scope

This Part is applicable to all police and firefighter pension funds and pension fund boards which are subject to the provisions of Sections 1-113.1 through 113.10 of the Illinois Pension Code [40 ILCS 5/1-113.1 through 1-113.10].

Section 4430.20 Required Disclosures

No pension fund shall engage an investment advisor, registered broker-dealer, bank, insurer or any other person for the purpose of providing investment services unless the following written disclosure requirements are met:

- a) A description, expressed as a set amount or range in dollars or as a percentage of the dollar value of a particular transaction or transactions, of any and all commissions, fees, penalties, or any other items of compensation related to a particular transaction that may be received by any such person from the pension fund. The written description must be furnished by any such person effectuating any transaction with a pension fund, and the written description need not be furnished with respect to each subsequent transaction to which the description applies.
- b) If the investment service contemplated is one which might result in the pension fund acquiring an asset from any inventory held by an investment advisor, registered broker-dealer, bank, insurer, or other person, the written engagement or contract must also include a

## DEPARTMENT OF INSURANCE

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## statement disclosing:

- 1) The possibility that the investment advisor, registered broker-dealer, bank or insurer may obtain a financial benefit from such sale beyond the items listed under subsection (a) above; and
- 2) That the realization and extent of any such benefit is dependent upon market valuations as of the date the inventoried asset was acquired as compared to the price at which the pension fund acquires the asset; and
- 3) That the pension fund should take steps to familiarize itself with the market in which any such acquisitions or investments are to be made.

be subject to the penalty provisions of the Illinois Pension Code [40 ILCS 5/1A-113(d)] and 50 Ill. Adm. Code 4435.

**Section 4430.30 Recordkeeping**

When authorizing any investment transaction, every pension fund subject to the provisions of Sections 1-113.1 through 1-113.10 of the Illinois Pension Code shall:

- a) Establish, maintain and file with the Pension Division of the Department of Insurance by no later than April 1, 1998, its current investment policy as required by Section 1-113.6 of the Illinois Pension Code. In addition, every pension fund shall file revisions to its investment policy with the Pension Division of the Department of Insurance 30 days after such revision is adopted by the pension fund board; and
- b) Establish and maintain such books, receipts, confirmations, statements, or other records in sufficient detail to verify and support all annual statements and investment and financial reports required to be filed with the Pension Division. Such records shall include, but are not limited to, any of the following records received by the pension fund:
  - 1) The minutes of any meeting of the board wherein investment matters are discussed;
  - 2) All correspondence, orders or directions to or from any person providing investment or custodial services;
  - 3) Any documentation concerning the letting and acceptance of bids for investment services;
  - 4) Any bank or brokerage policy, contract or other account statement reporting the status of a pension fund investment;
  - 5) Any receipt, confirmation, transmittal advice, binder or other record which confirms, verifies or reports any investment transaction; any investment cost, expense, fee or penalty; or any investment transaction profit or loss.

**Section 4430.40 Penalties**

If any party fails to comply with the requirements of this Part, including either the substance or filing requirements contained herein, such party shall



## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Commercial Fishing and Musseling in Certain Waters of the State
- 2) Code Citation: 17 Ill. Adm. Code 830
- 3) Section Numbers: Adopted Action:  
 830.20 Amendments  
 830.30 Amendments  
 830.40 Amendments  
 830.60 Amendments  
 830.70 Amendments  
 830.90 Amendments
- 4) Statutory Authority: Implementing and authorized by Sections 1-60, 1-65, 1-120, 10-120, 15-35, 15-40, 20-35, and 25-5 of the Fish and Aquatic Life Code [515 ILCS 5/1-60, 1- 65, 1-120, 10-120, 15-35, 15-40, 20-35, and 25-5].
- 5) Effective Date of Rulemaking: March 30, 1998
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) Date filed in Agency's Principal Office: March 27, 1998
- 9) Notice of Proposal Published in Illinois Register: December 26, 1998, 21 Ill. Reg. 16948
- 10) Has JCAR issued a Statement of Objections to these rules? No
- 11) Difference(s) between proposal and final version:  
 Section 830.90(a) - removed the comma following "musseling in Illinois waters"  
 Section 830.90(b) - added "the Department of" prior to "Natural Resources" and replaced "Administrative Order" with "Part"  
 Section 830.90(d) - changed subsection to read as follows: Commercial fishermen on the Ohio River shall submit to the Department an accurate monthly record of the undressed weights and species of fish harvested by the 10th of each month following harvest, whether or not any fish were harvested.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

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- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rulemaking: Amendments to this Part include eliminating harvest of washboard mussels on the Mississippi River to provide needed protection and correspond with proposed closures in Missouri and Iowa; changing the opening date for mussel season on the Mississippi River and Ohio River to April 1; adding language requiring at least a 4" bar mesh in trammel nets on the Ohio River; making the use of hand forks illegal; exempting the Ohio River from the 15" catfish limit; raising the limit on threeridge mussels to 3" and requiring monthly harvest reporting for commercial fishermen on the Ohio River.
- 16) Information and questions regarding these adopted amendments shall be directed to:

Jack Price  
 Department of Natural Resources  
 524 S. Second Street, Room 430  
 Springfield, IL 62701-1787  
 217/782-1809

The full text of the Adopted Amendments begins on the next page:

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF ADOPTED AMENDMENTS

## TITLE 17: CONSERVATION

## CHAPTER 1: DEPARTMENT OF NATURAL RESOURCES

## SUBCHAPTER b: FISH AND WILDLIFE

## PART 830

## COMMERCIAL FISHING AND MUSSELING IN CERTAIN WATERS OF THE STATE

Section	Definitions
830.5	Waters Open to Commercial Harvest of Fish
830.10	Waters Open to Commercial Harvest of Mussels and Seasons
830.20	Special Regulations
830.30	Devices
830.40	Permittion
830.50	Species
830.60	Size Limit
830.70	Commercial Fishing and Musseling in Additional Waters
830.80	Revocation and Suspension of Commercial Fishing and Musseling
830.90	Privileges, Hearings and Appeals and Reporting Requirements

**AUTHORITY:** Implementing and authorized by Sections 1-60, 1-65, 1-120, 10-120, 15-35, 15-40, 20-35 and 25-5 of the Fish and Aquatic Life Code [515 ILCS 5/1-60, 1-65, 1-120, 10-120, 15-35, 15-40, 20-35, and 25-5].

**SOURCE:** Adopted at 5 Ill. Reg. 6809, effective June 16, 1981; codified at 5 Ill. Reg. 10648; emergency amendment at 6 Ill. Reg. 6468, effective May 18, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 10680, effective August 20, 1982; amended at 7 Ill. Reg. 2707, effective March 2, 1983; amended at 10 Ill. Reg. 6926, effective April 15, 1986; amended at 11 Ill. Reg. 9513, effective May 5, 1987; amended at 12 Ill. Reg. 11714, effective June 30, 1988; amended at 15 Ill. Reg. 8544, effective May 24, 1991; amended at 16 Ill. Reg. 5257, effective March 20, 1992; amended at 17 Ill. Reg. 3177, effective March 2, 1993; emergency amendment at 18 Ill. Reg. 4671, effective March 14, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 9985, effective June 21, 1994; amended at 19 Ill. Reg. 5250, effective March 27, 1995; recodified by changing the agency name from Department of Conservation to Department of Natural Resources at 20 Ill. Reg. 9389; amended at 21 Ill. Reg. 4700, effective April 1, 1997; amended at 22 Ill. Reg. 6697, effective March 30, 1998.

## Section 830.20 Waters Open to Commercial Harvest of Mussels and Seasons

- a) Mississippi River and backwaters, April 1 to August 31 inclusive, except for the following areas:
- 1) All of the area directly above Lock and Dam 12 (RM 556.7) from the center of the navigation channel east to the Illinois shoreline and northward to a line extending from RM 558.4 to the Blanding's Landing boat ramp, including but not limited to all of

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the area contained within the designated U.S. Military Reservation area.

- 2) All of the waters contained within Sylvan Slough from the Interstate 74 highway bridge (RM 485.8) west to the lower tip of Arsenal Island (RM 482.6).
- 3) All of the area north of and perpendicular to the center line of the navigation channel to the Illinois shoreline lying between RM 433.0 (New Boston Boat Launching Ramp) to RM 433.8 (lower tip of the first upstream island along the Illinois shoreline).
- 4) Pontoosuc Bay contained within and described as that area from the center of the main navigation channel and perpendicular to the Illinois shoreline located between RM 388.0 (Pontoosuc light and daymark) and RM 390.2 (Dallas City boat access area).
- 5) All of the area southward of the center of the navigation channel and perpendicular to the Illinois shoreline on a line from the Des Moines River daymark (Iowa side) and the Des Moines River lighted buoy (Illinois side), both of which are at RM 361.7, to Lock and Dam 19 (RM 364.5) including any slough channels of the Mud Island area along the Illinois side.
- 6) All of the area east of the center of navigation channel and perpendicular to the Illinois shoreline between RM 314.0 (Whitney light and daymark) and RM 316.0 (Hadley Island Goale light and daymark).
- 7) All of the area east of the center of navigation channel and perpendicular to the Illinois shoreline between River Mile 238.4 (Hasting's Landing light and daymark) and River Mile 246.8 (Turner Landing light and daymark).
- 8) Mark Twain U.S. Fish and Wildlife Service National Wildlife Refuge Waters.
- b) Ohio River and backwaters, April 1 to September 30 inclusive.

(Source: Amended at 22 Ill. Reg. March 30, 1998, effective March 30, 1998)

## Section 830.30 Special Regulations

- a) Commercial fishing and musseling will not be permitted in any streams, ditches, or tributaries connected to the backwaters of the aforementioned waters.
- b) Any person harvesting mussels for commercial use may possess during the open season only those mussels identified in Section 830.60 of legal size. Mussels smaller than the legal size and all mussels not identified in Section 830.60 must be immediately returned to the mussel bed or location from which they were taken.
- c) It shall be illegal to possess mussel shell more than 15 days after the close of the season without a mussel dealer license.
- d) Paddlefish may not be commercially harvested except in the Ohio River, the Illinois River below Route 89, and in the Mississippi River below

## DEPARTMENT OF NATURAL RESOURCES

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Lock and Dam 19.

e) Commercial fishing devices must be checked and emptied of catch at the following time intervals:

- 1) Hoop nets and basket traps must be attended at least once every 48 hours during open water conditions. During ice cover conditions, hoop nets and basket traps must be attended at least once every 20 days.
- 2) Trammel and gill nets must be attended at least every 24 hours during open water conditions. During ice cover conditions, trammel and gill nets must be attended at least every 96 hours.
- 3) Trotlines and other hook and line devices must be checked at least every 24 hours.
- 4) Seines and trammel or gill nets fished by driving or drifting methods must be constantly attended.
- 5) Commercial gear containing dead or moribund fish as a result of failure to check gear and empty catch shall be considered an illegal device.

f) Washboard mussels may not be taken on the Mississippi River.

(Source: Amended at 22 Ill. Reg. 6697, effective

MAR 30 1998)

## Section 830.40 Devices

a) Commercial fishing devices used in the aforementioned waters shall conform to all regulations as outlined in Article 15 of Chapter 515.56 of the Illinois Compiled Revised Statutes. Hoop nets, basket traps, trot lines and dip nets may be used in all of the aforementioned waters.

b) It shall be unlawful:

- 1) To use trammel nets and gill nets except in the Illinois River up to Route 89 Highway bridge, the Ohio River and the Mississippi River.
  - 2) To use seines except in the Illinois, Mississippi, Ohio and Wabash Rivers (except seining will not be permitted in Boston Bay and its connected backwaters above the mouth of Boston Bay in Mercer County).
  - 3) To use trammel nets in the Ohio River with less than 4 inch bar mesh netting.
- c) Musseling devices used in waters open to commercial musseling shall conform to all regulations as outlined below and in Articles 1 and 15 of 515 ILCS 5.
- d) It shall be unlawful to use hand forks except in the Mississippi River.
- e) It shall be unlawful to use basket dredges, mechanical devices and hand dredges in the taking of mussels.
- f) It shall be unlawful to harvest mussels in the Ohio River except by using crowfoot bars.

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- g) It shall be unlawful to tether or hold mussels in any containment device. Mussels must be taken to the boat or released each day.
- h) Brail or crowfoot bars must be 20 feet or less in length. Not more than 3 bars may be possessed in each boat.

(Source: Amended at 22 Ill. Reg. 6697, effective

MAR 30 1998)

## Section 830.60 Species

a) The following species of fish may be taken by licensed commercial fishermen:

- 1) Carp
- 2) Buffalo
- 3) Freshwater drum
- 4) Catfishes (includes bullheads)
- 5) Paddlefish (only in waters specified in Section 830.30)
- 6) Carpsuckers
- 7) Suckers (except Longnose Sucker)
- 8) Redhorses (except River Redhorse and Greater Redhorse)
- 9) Goldeye and Mooneye
- 10) Gar (except alligator gar)
- 11) Bowfin
- 12) American muscel
- 13) Shovelnose sturgeon
- 14) Gizzard shad
- 15) White amur (grass carp)
- 16) Minnows
- 17) Goldfish

b) The following species of mussels may be taken by licensed commercial musselers:

- 1) Washboard (Megalonaias nervosa) (Ohio River Only)
- 2) Threeridge (Ambiema plicata)
- 3) Mapleleaf (Quadrula quadrula)
- 4) Pimpleback (Quadrula pustulosa)
- 5) Monkeyface (Quadrula metanevra)
- 6) Wartyback (Quadrula nodulata)
- 7) Pigtoe (Fusconaia flava forma undata)
- 8) Hickory Nut (Obovaria olivaria)
- 9) Pink Heelsplitter (Potamilus alatus)
- 10) Pocketbook (Lampsilis ovata)
- 11) Black Sandshell (Ligumia recta)

(Source: Amended at 22 Ill. Reg. 6697, effective

MAR 30 1998)

## Section 830.70 Size Limit



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during the season by the 10th of each month following harvest, whether or not any mussels or mussel shells were harvested. Reports must be submitted on official Department of Natural Resources report forms.

f) Holders of a commercial mussel dealer's license shall submit an accurate record of the types and pounds of each species of mussel and/or relic mussel shells purchased on a monthly basis during the season by the 10th of each month following purchase, whether or not any mussels or mussel shells were purchased. Reports must be submitted on official Department of Natural Resources report forms.

g) Failure of licensed commercial mussel dealers, fishermen or musselors to submit the required reports in a manner and time frame specified by the Department shall be grounds for refusal on the part of the Department to issue said individuals a license application for the following year until all required reports are received by the Department.

(Source: Amended at 22 Ill. Reg. 6697 = 1, effective MAR 30 1998)

- a) No channel catfish, blue catfish, flathead catfish or white catfish under 15 inches in length, undressed, or 12 inches in length, dressed, or 10.7 inches when dressed with the first vertebrae (T bone) removed, may be taken except in the Ohio River.
- b) There is no size limit on other species listed in Section 830.60(a).
- c) All Washboard mussels shall measure not less than 4.0 inches. All relic (dead) Washboards shall measure not less than 4.0 inches.
- d) All Greenidge-and maple leaf mussels shall measure not less than 2.75 inches.
- e) All Threeridge mussels shall measure not less than 3.0 inches.
- f) All other mussels listed in 830.60(b), shall measure not less than 2.5 inches.

(Source: Amended at 22 Ill. Reg. 6697, effective MAR 30 1998)

Section 830.90 Revocation and Suspension of Commercial Fishing and Musseling Privileges, Hearings and Appeals and Reporting Requirements

- a) In accordance with Section 20-105 of the Fish and Aquatic Life Code [515 ILCS 5/20-105], failure to comply with the provisions of the Fish and Aquatic Life Code of Illinois pertaining to commercial fishing and/or musseling in Illinois waters, and this Part, part will result in suspension or revocation of the commercial fishing and/or musseling licenses. The procedure by which suspensions and revocations are made, the rights of commercial fishermen and musselers to notice and hearing, and the procedures governing such hearings are set forth in 17 Ill. Adm. Code 2530 (Rules governing Department Formal Hearings Conducted for Rule-Making and Contested Cases).
- b) Where waters of the State are open to commercial fishing or musseling by contract, the contract will be revoked upon failure of the contractor to comply with all terms of the contract. Furthermore, any violation of a contract issued by the Director of the Department of Natural Resources Conservation or his agents shall be considered a violation of this Part Administrative--Order and subject to the penalties as set forth in Sections 20-35 and 20-105 of the Fish and Aquatic Life Code [515 ILCS 5/20-35, 20-105].
- c) Commercial fishermen shall submit an accurate annual record of the undressed weights of the species of fish harvested to the Department by January 31 of the following year, whether or not any fish were harvested.
- d) Commercial fishermen on the Ohio River shall submit to the Department an accurate monthly record of the undressed weights and species of fish harvested by the 10th of each month following harvest, whether or not any fish were harvested.
- e) Holders of a commercial mussel harvest license shall submit an accurate record of the types and pounds of each species of mussel and/or relic mussel shells harvested or purchased on a monthly basis

OFFICE OF BANKS AND REAL ESTATE

NOTICE OF ADOPTED REPEALER

- 1) Heading of the Part: Public Hearings on Acquisition of Illinois Banks or Illinois Bank Holding Companies by Midwest Bank Holding Companies
- 2) Code Citation: 38 Ill. Adm. Code 390
- 3) 

<u>Section Number:</u>	<u>Adopted Action:</u>
390.10	Repeal
390.20	Repeal
390.30	Repeal
390.40	Repeal
390.50	Repeal
390.60	Repeal
390.70	Repeal
390.80	Repeal
390.90	Repeal
390.100	Repeal

- 4) Statutory Authority: Implementing Section 3.071(d) and authorized by Section 3.074(a) of the Illinois Bank Holding Company Act of 1957 [205 ILCS 10/3.071(d) and 3.074(a)].

- 5) Effective Date of Adopted Repealer: March 30, 1998

- 6) Does this rulemaking contain an automatic repeal date? No

- 7) Does this rulemaking contain incorporations by reference? No

- 8) Date Filed in Agency's Principal Office: March 30, 1998

- 9) Date Notice of Proposed Repealer was published in Illinois Register: January 2, 1998, 22 Ill. Reg. 115

- 10) Has JCAR issued a Statement of Objections to this rule? No

- 11) Differences between proposal and final version: None

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? No changes were requested or made.

- 13) Will this amendment replace emergency amendments currently in effect? No

- 14) Are there any other proposed amendments pending on this Part? No

- 15) Summary and Purpose of Rules: These hearing rules are being repealed because they have been made obsolete with the passage of the federal Riegle-Neal Interstate Banking, Branching and Efficiency Act and subsequent changes to the Illinois Banking Act. The Joint Committee on

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NOTICE OF ADOPTED REPEALER

Administrative Rules has encouraged the Office and other agencies to review their hearing rules and when possible consolidate or repeal duplicative or obsolete rules.

- 16) Information and questions regarding this Repealer shall be directed to:

John Arthur  
Legislative Liaison  
Office of Banks and Real Estate  
500 East Monroe, Suite 900  
Springfield, Illinois 62701  
217/782-3000 fax: 217/524-5941

## OFFICE OF BANKS AND REAL ESTATE

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Savings and Loan Act of 1985
- 2) Code Citation: 38 Ill. Adm. Code 1000
- 3) Section Number:  
 1000.110 Adopted Action:  
 Amendment  
 1000.141 Amendment  
 1000.142 Amendment  
 1000.151 New Section
- 4) Statutory Authority: Implementing and authorizing by Section 7-3(b) of the Illinois Savings and Loan Act of 1985 [205 ILCS 105/7-3(b)].
- 5) Effective Date of Adopted Amendments: March 30, 1998
- 6) Does this amendment contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) Date Filed in Agency's Principal Office: March 30, 1998
- 9) Date Notice of Proposed Amendments was published in Illinois Register:  
December 19, 1997, 21 Ill. Reg. 16243
- 10) Has JCAR issued a Statement of Objections to this rule? No

11) Differences between proposal and final version: Non-substantive technical changes suggested by the Joint Committee on Administrative Rules were made.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace emergency amendments currently in effect? No

14) Are there any other proposed amendments pending on this Part? No

15) Summary and Purpose of Rules: The proposed rulemaking amends the rules under the Savings and Loan Act of 1985 to provide for a credit which state savings and loan associations can apply against the supervisory fees they pay. The amount of the one time credit will be determined by the asset size of an association as of December 31, 1996. (This credit is being implemented concurrently with a similar fee credit for state savings banks.) The proposed rulemaking also amends Section 1000.110 to make a technical correction/clarification. The proposed rulemaking also amends Sections 1000.141 and 1000.142 to provide the Commissioner more flexibility as to when supervisory fees may be billed.

## OFFICE OF BANKS AND REAL ESTATE

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- 16) Information and questions regarding these Adopted Amendments shall be directed to:

John Arthur  
 Legislative Liaison  
 Office of Banks and Real Estate  
 500 East Monroe, Suite 900  
 Springfield, Illinois 62701  
 217/782-3000 fax: 217/524-5941

The full text of the Adopted Amendments begins on the next page:



OFFICE OF BANKS AND REAL ESTATE

NOTICE OF ADOPTED AMENDMENTS

TITLE 38: FINANCIAL INSTITUTIONS

CHAPTER II: OFFICE OF BANKS AND REAL ESTATE

PART 1000

ILLINOIS SAVINGS AND LOAN ACT OF 1985

SUBPART A: FEES

Section	
1000.110	Filings
1000.120	Conditions
1000.130	Examination Fees
1000.140	Annual Supervisory Fees (Repealed)
1000.141	Supervisory Fees
1000.142	Adjusted Supervisory Fees
1000.143	Special Assessment (Emergency Expired)
1000.150	Manner of Payment
1000.151	Special Credit

SUBPART B: DEFINITIONS

Section	
1000.205	Introduction
1000.210	Association
1000.220	Commissioner
1000.230	Single Family Dwelling
1000.240	Unsafe
1000.250	Mobile Home
1000.260	Mobile Home Chattel Paper
1000.270	Person
1000.280	Proposed Borrower
1000.290	Redlining

SUBPART C: REPORTS

Section	
1000.310	Contracts (Repealed)

SUBPART D: OPERATIONS

Section	
1000.410	Permanent Reserve Shares
1000.420	Dividend Advertising
1000.430	Maintenance of Records
1000.440	Business Plan

SUBPART E: APPRAISALS

OFFICE OF BANKS AND REAL ESTATE

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Section	
1000.510	Appraisals

SUBPART F: INVESTMENTS

Section	
1000.610	Prudent Person Rule
1000.615	Investment Underwriting Practices
1000.620	Discrimination and Redlining Prohibited
1000.630	Loans Secured by Real Estate
1000.640	Construction Loans
1000.650	College Loans (Repealed)
1000.660	Mobile Home Financing
1000.665	Other Loans
1000.670	Collateral Loans (Repealed)
1000.675	Investment Parity (Repealed)
1000.680	Unsecured Loans (Repealed)
1000.690	Sale of Loans and Participations (Repealed)
1000.700	Insider Loan Rates (Repealed)
1000.710	Reverse Mortgage Loans
1000.720	Repurchase Agreements

SUBPART G: BONUS PLANS

Section	
1000.810	Bonus Plans

SUBPART H: NOTICE TO COMMISSIONER

Section	
1000.910	Corrective Action

SUBPART I: SERVICE CORPORATIONS

Section	
1000.1010	Requirements
1000.1020	Approval by the Commissioner
1000.1030	Lending Limitations
1000.1040	Investments by Service Corporations
1000.1050	Ownership of Capital Stock of Service Corporation
1000.1060	Prohibited Transactions
1000.1070	Disclosure to Service Corporation
1000.1080	Reporting Requirements
1000.1090	Audit Requirements

SUBPART J: RELOCATIONS AND BRANCHING

Section
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## OFFICE OF BANKS AND REAL ESTATE

## NOTICE OF ADOPTED AMENDMENTS

1000.1110 General  
 1000.1120 Application  
 1000.1130 Request for Preliminary Determination  
 1000.1140 Amendment of Application (Repealed)  
 1000.1150 Public Notice and Inspection  
 1000.1160 Protest  
 1000.1170 Oral Argument  
 1000.1180 Application for and Maintenance of Branch Office after Conversion,  
 Consolidation, Purchase of Assets or Merger  
 1000.1190 Redesignation of Offices  
 1000.1200 Termination of Operation and/or Closing of a Branch Office  
 1000.1210 Agency Offices  
 1000.1220 Remote Drive-In and/or Remote Pedestrian Facilities

## SUBPART K: CAPITAL NOTES AND DEBENTURES

Section  
 1000.1310 Approval  
 1000.1320 Conversion to Stock  
 1000.1330 Priority of Claim  
 1000.1340 Effect on Reserve Requirements

## SUBPART L: THIRD-PARTY PAYMENT ACCOUNTS

Section  
 1000.1410 General  
 1000.1420 Depositors  
 1000.1430 Rate of Interest  
 1000.1440 Overdraft Privilege  
 1000.1450 Charges and Fees  
 1000.1460 Disclosure  
 1000.1470 Membership  
 1000.1480 Approval and Authorization

## SUBPART M: ADMINISTRATIVE HEARING PROCEDURES

Section  
 1000.1510 Applicability  
 1000.1520 Definitions  
 1000.1530 Filing  
 1000.1540 Form of Documents  
 1000.1550 Computation of Time  
 1000.1560 Appearances  
 1000.1570 Notice of Hearing  
 1000.1580 Service of the Notice of Hearing  
 1000.1590 Motion and Answer  
 1000.1600 Consolidation and Severance of Matters - Additional Parties  
 1000.1610 Intervention

## OFFICE OF BANKS AND REAL ESTATE

## NOTICE OF ADOPTED AMENDMENTS

1000.1620 Postponement or Continuance of Hearing  
 1000.1630 Authority of Hearing Officer  
 1000.1640 Bias or Disqualification of Hearing Officer  
 1000.1650 Prehearing Conferences  
 1000.1660 Discovery  
 1000.1670 Subpoenas  
 1000.1680 Conduct of the Hearing  
 1000.1690 Default  
 1000.1700 Evidence  
 1000.1710 Official Notice  
 1000.1720 Hostile Witnesses  
 1000.1730 Transcription of Proceedings  
 1000.1740 Briefs  
 1000.1750 Hearing Officer's Findings, Opinions and Recommendations  
 1000.1760 Order of the Commissioner  
 1000.1770 Rehearings  
 1000.1780 Existing Statutory or Agency Procedures and Practices  
 1000.1790 Costs of Hearing

## SUBPART N: SAVINGS AND LOAN HOLDING COMPANIES

Section  
 1000.1800 Applicability  
 1000.1810 Plain Meaning/Strict Interpretation  
 1000.1905 Affiliate  
 1000.1910 Assets  
 1000.1915 Books of Record  
 1000.1920 Capital Stock  
 1000.1925 Charter  
 1000.1930 Control  
 1000.1935 Eligible Account Holder  
 1000.1940 Eligibility Record Date  
 1000.1945 Employee  
 1000.1950 Equity Security  
 1000.1955 Insured Institution  
 1000.1970 Member  
 1000.1972 Net Worth  
 1000.1975 Officer  
 1000.1980 Person  
 1000.1982 Qualifying Deposit  
 1000.1985 Sale  
 1000.1990 Security  
 1000.1993 Source Documents  
 1000.1997 Subsidiary  
 1000.2005 Liquidation Account and Proxies  
 1000.2010 Mutual Holding Company Ceasing to be a Depository Institution  
 1000.2020 Directors of a Mutual Holding Company  
 1000.2030 Stock Sales

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NOTICE OF ADOPTED AMENDMENTS

1000.2040	Stock of a Subsidiary of a Mutual Holding Company
1000.2050	Stock Subsidiary Formation
1000.2055	Net Worth Maintenance Agreement
1000.2060	Members' Rights
1000.2070	Investment
1000.2105	Notice Requirement/Corrective Action
1000.2110	Insider Abuses
1000.2120	Penalty (Emergency Expired)
1000.2200	Determination of the Qualification and Condition of an Out-of-State Acquisition
1000.2300	Disposal of a Subsidiary
1000.2310	Dividends
1000.2320	Officers and Directors List
1000.2330	Access to Books and Records
1000.2340	Reports (Emergency Expired)
1000.2400	Annual Audit Requirements
1000.2410	Maintenance of Records
1000.2420	Notice of Appointment of CPA
1000.2500	Savings and Loan Holding Company Filing Fees
1000.2510	Savings and Loan Holding Company Supervisory Fees
1000.2520	Examination Fees
1000.2530	Conditions
1000.2540	Manner of Payment
1000.2550	Transformation from Deposit to Non-Deposit (Emergency Expired)

SUBPART O: SAVINGS AND LOAN ADVISORY BOARD

Section	Purpose
1000.2700	Composition, Appointment
1000.2710	

AUTHORITY: Implementing and authorized by Section 7-3(b)(2) of the Illinois Savings and Loan Act of 1985 [205 ILCS 105/7-3(b)(2)] and Section 5-35 of the Illinois Administrative Procedure Act [5 ILCS 100/5-35].

SOURCE: Filed and effective January 18, 1974; amended at 2 Ill. Reg. 44, p. 179, effective October 30, 1978; emergency amendment at 2 Ill. Reg. 45, p. 169, effective November 1, 1978, for a maximum of 150 days; amended at 3 Ill. Reg. 5, p. 883, effective January 29, 1979; amended at 3 Ill. Reg. 11, p. 163, effective March 12, 1979; amended at 3 Ill. Reg. 19, p. 22, effective May 12, 1979; emergency amendment at 3 Ill. Reg. 39, p. 230, effective September 17, 1979, for a maximum of 150 days; emergency amendment at 4 Ill. Reg. 8, p. 207, effective February 14, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 30, p. 1241, effective July 14, 1980; emergency amendment at 5 Ill. Reg. 2524, effective February 19, 1981, for a maximum of 150 days; amended at 5 Ill. Reg. 7124, effective June 24, 1981; amended at 5 Ill. Reg. 11377, effective October 14, 1981; amended at 6 Ill. Reg. 3175, effective March 4, 1982; amended at 6 Ill. Reg. 4218, effective

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April 6, 1982; amended at 6 Ill. Reg. 4219, effective April 6, 1982; amended at 6 Ill. Reg. 4227, effective April 6, 1982; amended at 6 Ill. Reg. 7141, effective June 1, 1982; amended at 7 Ill. Reg. 1993, effective January 28, 1983; codified at 7 Ill. Reg. 13669; amended at 8 Ill. Reg. 8630, effective June 1, 1984; amended at 8 Ill. Reg. 15066, effective August 7, 1984; emergency amendment at 9 Ill. Reg. 17437, effective October 24, 1985, for a maximum of 150 days; emergency amendment at 10 Ill. Reg. 4946, effective March 11, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 14290, effective August 20, 1986; amended at 10 Ill. Reg. 19781, effective November 6, 1986; amended at 11 Ill. Reg. 20648, effective December 2, 1987; emergency amendment at 11 Ill. Reg. 20672, effective December 3, 1987, for a maximum of 150 days; emergency amendments at 12 Ill. Reg. 8106, effective April 20, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 15165, effective September 13, 1988; amended at 13 Ill. Reg. 8927, effective May 26, 1989; amended at 16 Ill. Reg. 4881, effective March 17, 1992; transferred from Chapter III, 38 Ill. Adm. Code 400 March 17, 1992; transferred from Chapter III, 38 Ill. Adm. Code 400 (Commissioner of Savings and Loan Associations) to Chapter VIII, 38 Ill. Adm. Code 1000 (Commissioner of Savings and Residential Finance) pursuant to Savings Bank Act (205 ILCS 1003) at 17 Ill. Reg. 4464; recodified from Chapter III, Commissioner of Savings and Residential Finance, to Chapter VIII, Office of Banks and Real Estate, pursuant to PA 89-508, at 20 Ill. Reg. 12645; amended at 22 Ill. Reg. 670, effective ~~March 30, 1990~~ **MAR 30 1990**.

SUBPART A: FEES

Section 1000.110 Filings

Filings pertaining to matters named hereafter shall be subject to the indicated fee pursuant to the Illinois Savings and Loan Act of 1985 [205 ILCS 105/4-1]. Such fee or fees shall be paid at the Commissioner's office at the time of filing. Payment shall be by check, draft or money order made payable to the Office of Banks and Real Estate.

- Permit to Organize  
(Article 2 of the Act) ..... \$ 1,000.00
- Conversion to Federal Charter  
(Article 6, Section 6-12 of the Act) ..... \$ One time the last total annual Supervisory Fee calculated and assessed against the Association as set forth in Section 1000.141(a) and (b) of this Part.
- Merger  
(Article 6, Section 6-5 of the Act) ..... \$ 1,000.00
- Bulk Sale of Assets  
(Article 6, Section 6-11 of the Act) ..... \$ 1,000.00
- Amendment to Articles of Incorporation providing for the issuance of Permanent Reserve Shares  
(Article 4, Section 4-4 of the Act)  
(Section 1000.410 of this Part) ..... \$ 1,000.00
- Appeals to the Board of Savings Institutions  
(Article 7, Section 7-23 of the Act)



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(Article 7, Section 7-24 of the Act)  
 (Article 7, Section 7-26 of the Act) ..... \$ 500.00  
 Each additional party to an appeal to the Board of Savings  
 Institutions shall pay the sum of \$100.00, and shall bear its pro rata  
 share of all expenses incurred in said appeal except as otherwise  
 provided in the Act

g) Hearing or Oral Argument -- each applicant requesting a hearing or  
 oral argument and/or each objector requesting a hearing or oral  
 argument and/or each adversary participating in a hearing or oral  
 argument

(Article 7, Section 7-27 of the Act)  
 (Section 1000.1170 of this Part)  
 (Section 1000.1510 of this Part) ..... \$ 500.00  
 Each applicant requesting a hearing or oral argument and/or each  
 objector requesting a hearing or oral argument and/or each adversary  
 participating in a hearing or oral argument shall bear its pro rata  
 share of all expenses incurred in said proceedings.

h) Application for Subsidiary Acquisition Fee

(Article 1A-5 of the Act) ..... \$ 250.00  
 i) Photocopies and Duplication Fees ..... \$ 25  
 1) Photocopies (per page) ..... \$ 25  
 2) Savings and Loan Act (bound edition) ..... \$ 25.00  
 3) Rules (bound edition) ..... \$ 25.00  
 4) Annual Report (additional copy) ..... \$ 25.00  
 5) Mailing Labels ..... \$ 35.00

(Source: Amended at 22 Ill. Reg. effective

6707, effective

## Section 1000.141 Supervisory Fees

a) The Commissioner shall receive and there shall be paid to the  
 Commissioner by each association and each service corporation  
 operating under the provisions of the Illinois Savings and Loan Act of  
 1985, a fixed fee of \$450, plus a variable fee based on the total  
 assets of each association and each service corporation as shown on  
 the financial report filed with the Commissioner for the reporting  
 period of the prior calendar year ended December 31 according to the  
 following schedule: 25.2¢ per \$1,000 of the first \$2,000,000 of total  
 assets, 22.68¢ per \$1,000 of the next \$3,000,000 of total assets,  
 20.16¢ per \$1,000 of the next \$5,000,000 of total assets, 17.64¢ per  
 \$1,000 of the next \$15,000,000 of total assets, 15.12¢ per \$1,000 of  
 the next \$25,000,000 of total assets, 12.6¢ per \$1,000 of the next  
 \$50,000,000 of total assets, 10.8¢ per \$1,000 of the next \$400,000,000  
 of total assets, 7.56¢ per \$1,000 of the next \$500,000,000 of total  
 assets, and 5.04¢ per \$1,000 of all total assets in excess of  
 \$1,000,000,000 of such association or service corporation. In the  
 situation where service corporations and/or finance subsidiaries are

## OFFICE OF BANKS AND REAL ESTATE

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owned by the Association, the owned assets may be consolidated with  
 the assets of the Association for calculation of this fee. If the  
 finance subsidiary is not active and is in the form of a  
 Collateralized Mortgage Obligation or a similar vehicle (Mortgage  
 Backed Securities, Real Estate Mortgage Income Certificates, and other  
 securitized debt instruments), the Commissioner shall waive that  
 portion of the fee attributed to the finance subsidiary.

b) The Commissioner shall receive and there shall be paid to the  
 Commissioner by each association a fee of \$450 for each approved  
 branch office or facility office established under the provisions of  
 Subpart J of this Part. The determination of such fees shall be made  
 annually as of the close of business of the prior calendar year ended  
 December 31.

c) One fourth of the sum of the supervisory fee so determined shall be  
 remitted as billed by the Commissioner at the time of each calendar  
 quarter-end--A calendar quarter-end shall mean--March--31--June--30--  
 September--30--and--December--31. Such fees shall be for the respective  
 current year.

d) Supervisory fees shall be determined by the Commissioner within 90  
 days following the close of the respective calendar year; however, the  
 dates of billings shall not prejudice the validity of an invoice for  
 any such fees billed at a later date.

e) In the event the state charter is converted or otherwise surrendered  
 during the course of the year, the Commissioner shall determine the  
 supervisory fee based on the total assets of the Association as of the  
 month-end immediately preceding the cancellation of the state charter,  
 except that the measurement date may be another date at the discretion  
 of the Commissioner in the event an Association elects to liquidate.  
 In determining whether to set another measurement date, the  
 Commissioner shall consider the following elements: whether the  
 association is undergoing a planned liquidation (where an association  
 elects to not continue operations), or, the association has  
 transferred significant assets (more than 1/2 of 1% of the total  
 assets at the previous measurement date).

(Source: Amended at 22 Ill. Reg. effective  
 6707, effective

## Section 1000.142 Adjusted Supervisory Fees

a) The Commissioner shall receive and there shall be paid to the  
 Commissioner an additional fee as an adjustment to the supervisory fee  
 specified in Section 1000.141 of this Subpart, to be based upon the  
 difference between the total assets of each association and each  
 service corporation as shown by its financial report filed with the  
 Commissioner for the reporting period of the calendar year ended  
 December 31 on which the supervisory fee was based, and the total  
 assets of each association and each service corporation as shown by

OFFICE OF BANKS AND REAL ESTATE

NOTICE OF ADOPTED AMENDMENTS

its financial report filed with the Commissioner for the reporting period of the calendar year ended December 31 in which the quarterly payments referred to in Section 1000.141 of this Subpart are made according to the following schedule: 25.2¢ per \$1,000 of the first \$2,000,000 of total assets, 22.68¢ per \$1,000 of the next \$3,000,000 of total assets, 20.16¢ per \$1,000 of the next \$5,000,000 of total assets, 17.64¢ per \$1,000 of the next \$15,000,000 of total assets, 15.12¢ per \$1,000 of the next \$25,000,000 of total assets, 12.6¢ per \$1,000 of the next \$50,000,000 of total assets, 10.8¢ per \$1,000 of the next \$400,000,000 of total assets, 7.56¢ per \$1,000 of the next \$500,000,000 of total assets, and 5.04¢ per \$1,000 of all total assets in excess of \$1,000,000,000 of such association or service corporation. In the situation where service corporations and/or finance subsidiaries are owned by the Association, the owned assets may be consolidated with the assets of the Association for calculation of this fee. If the finance subsidiary is not active and is in the form of a Collateralized Mortgage Obligation or a similar vehicle, the Commissioner shall waive that portion of the fee attributed to the finance subsidiary.

b) Adjusted supervisory fees shall be remitted as billed by the Commissioner on March 31 of the next calendar year. In the event the total assets of each association and each service corporation as reported on the earlier financial report are more than the total assets as reported on the later annual report the Commissioner shall credit the next quarterly remittance of the supervisory fee in the same proportion.

c) In the event the state charter is converted or otherwise surrendered during the course of the year, the Commissioner shall determine the supervisory fee based on the total assets of the Association as of the month-end immediately preceding the cancellation of the state charter, except that the measurement date may be another date at the discretion of the Commissioner in the event an Association elects to liquidate. In determining whether to set another measurement date, the Commissioner shall consider the following elements: whether the association is undergoing a planned liquidation (where an association elects to not continue operations), or, the association has transferred significant assets (more than 1/2 of 1% of the total assets at the previous measurement date).

(Source: Amended at 22 Ill. Reg. 6707, effective MAR 30 1993)

Section 1000.151 Special Credit

The Commissioner shall issue a credit memorandum that each association operating under the provisions of the Illinois Savings and Loan Act of 1985 [205 ILCS 105] may use to offset balances owed from the Supervisory Fee calculated in Section 1000.141 of this Part. The credit shall be calculated

OFFICE OF BANKS AND REAL ESTATE

NOTICE OF ADOPTED AMENDMENTS

based on the total assets reported by each association as of December 31, 1996 as follows: 2.25¢ per \$1,000 of the first \$2,000,000 of total assets; 2.025¢ per \$1,000 of the next \$3,000,000 of total assets; 1.8¢ per \$1,000 of the next \$5,000,000 of total assets; 1.575¢ per \$1,000 of the next \$15,000,000 of total assets; 1.35¢ per \$1,000 of the next \$25,000,000 of total assets; 1.125¢ per \$1,000 of the next \$50,000,000 of total assets; .9¢ per \$1,000 of the next \$400,000,000 of total assets; and .675¢ per \$1,000 of the total assets in excess of \$500,000,000 of such savings bank. In addition, the credit shall include a fixed amount of \$400.

(Source: Added at 22 Ill. Reg. 6707, effective MAR 30 1993)

## OFFICE OF BANKS AND REAL ESTATE

## NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Savings Bank Act

2) Code Citation: 38 Ill. Adm. Code 1075

3) Section Number:

1075.100 Adopted Action:  
 1075.130 Amendment  
 1075.140 Amendment  
 1075.141 New section  
 1075.310 Amendment  
 1075.400 Repeal  
 1075.430 Amendment  
 1075.480 Amendment  
 1075.505 Amendment  
 1075.515 Amendment  
 1075.520 Amendment  
 1075.525 Repeal  
 1075.530 Amendment  
 1075.535 Amendment  
 1075.600 Amendment  
 1075.700 Amendment  
 1075.720 Amendment  
 1075.730 Amendment  
 1075.750 Amendment  
 1075.1100 Amendment  
 1075.1105 Amendment  
 1075.1110 Amendment  
 1075.1111 New Section  
 1075.1115 Amendment  
 1075.1210 Amendment  
 1075.1220 Amendment  
 1075.1230 Amendment  
 1075.1240 Repeal  
 1075.1245 Amendment  
 1075.1270 Amendment  
 1075.1285 Amendment  
 1075.1305 Repeal  
 1075.1330 Amendment  
 1075.1410 Amendment  
 1075.1415 Amendment  
 1075.1420 Repeal  
 1075.1425 Repeal  
 1075.1450 Amendment  
 1075.1510 Repeal  
 1075.1520 Amendment  
 1075.1530 Amendment  
 1075.1700 Amendment  
 1075.1800 Amendment

## OFFICE OF BANKS AND REAL ESTATE

## NOTICE OF ADOPTED AMENDMENTS

1075.1810 Repeal  
 1075.1835 Amendment  
 1075.1845 Amendment  
 1075.2040 Amendment  
 1075.2440 Amendment

4) Statutory Authority: Implementing and authorized by the Savings Bank Act [205 ILCS 205].

5) Effective Date of Adopted Amendments: March 30, 1998

6) Does this amendment contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) Date Filed in Agency's Principal Office: March 30, 1998

9) Date Notice of Proposed Amendments was published in Illinois Register: December 19, 1997, 21 Ill. Reg. 16255

10) Has JCAR issued a Statement of Objections to this rule? No

11) Differences between proposal and final version: As part of an agreement with the Joint Committee on Administrative Rules, more specific language was added to Section 1075.430 and a subsection was deleted in Section 1075.1800.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace emergency amendments currently in effect? No

14) Are there any other proposed amendments pending on this Part? No

15) Summary and Purpose of Rules: The proposed rulemaking amends the rules under the Savings Bank Act to provide for a credit which state savings banks can apply against the supervisory fees they pay. The amount of the one time credit will be determined by the asset size of a savings bank as of December 31, 1996. (This credit is being implemented concurrently with a similar fee credit for state savings and loan associations.) Also, the fee for Acquisition of Control of a Savings Banks is lowered from \$5,000 to \$500 and the fees for holding company transactions are reworked and relocated to the general fee section of the rules. The proposed rulemaking also makes numerous other changes to the Savings Bank Act rules to eliminate or consolidate unnecessarily burdensome requirements for savings banks; provide for administrative and procedural streamlining; delete obsolete provisions; and make technical corrections and updates.



## OFFICE OF BANKS AND REAL ESTATE

## NOTICE OF ADOPTED AMENDMENTS

- 16) Information and questions regarding these Adopted Amendments shall be directed to:

John Arthur  
Legislative Liaison  
Office of Banks and Real Estate  
500 East Monroe, Suite 900  
Springfield, Illinois 62701  
217/782-3000 fax: 217/524-5941

The full text of the Adopted Amendments begins on the next page:

## OFFICE OF BANKS AND REAL ESTATE

## NOTICE OF ADOPTED AMENDMENTS

TITLE 38: FINANCIAL INSTITUTIONS  
CHAPTER II: OFFICE OF BANKS AND REAL ESTATE

PART 1075  
SAVINGS BANK ACT

## SUBPART A: FILINGS

Section	Filings
1075.100	Conditions
1075.110	Examination Fees
1075.120	Supervisory Fees
1075.130	Adjusted Supervisory Fees
1075.140	Special Credit
1075.141	

## SUBPART B: DEFINITIONS

Section	Definitions
1075.200	

## SUBPART C: REPORTS

Section	Contracts
1075.300	Financial Reports
1075.310	

## SUBPART D: OPERATIONS

Section	Capital Stock (Repealed)
1075.400	Minimum Capital Requirement
1075.410	Conflicting Federal Powers, Law and Regulations
1075.415	Advertising
1075.420	Maintenance of Records
1075.430	Business Plan
1075.440	Excess Insurance
1075.450	Vacancies in the Board of Directors
1075.455	Bond of Officers, Directors, Employees and Agents
1075.460	Indemnification of Officers, Directors, Employees and Agents
1075.465	Deceptively Similar Names
1075.470	Manner of Display of Annual Meeting Notice
1075.480	Procedures for Exercise of Dissenters Rights
1075.490	

## SUBPART E: INVESTMENTS

Section	Prudent Person Rule
1075.500	

## OFFICE OF BANKS AND REAL ESTATE

## NOTICE OF ADOPTED AMENDMENTS

1075.505 Investment Underwriting Practice  
 1075.510 Discrimination and Redlining  
 1075.515 Loans Secured by Real Estate  
 1075.520 Construction Loans  
 1075.525 Mobile Home Financing (Repealed)  
 1075.530 Overdraft Loans  
 1075.535 Education Loans  
 1075.540 Vehicle/Automobile Loans  
 1075.545 Home Equity Loans  
 1075.550 Letter of Credit  
 1075.555 Other Investments  
 1075.560 Commercial Paper  
 1075.565 Financial Futures  
 1075.570 Financial Options  
 1075.575 Finance Leasing  
 1075.580 Suretyship  
 1075.585 Asset Reserves

SUBPART F: SERVICE CORPORATION AND OPERATING SUBSIDIARIES

Section  
 1075.600 Requirements  
 1075.610 Approval by the Commissioner  
 1075.620 Investment Limitations  
 1075.630 Investments by Service Corporations  
 1075.640 Ownership of Capital Stock of Service Corporation  
 1075.650 Prohibited Transactions  
 1075.660 Disclosure to Service Corporation  
 1075.670 Reporting Requirements  
 1075.680 Audit Requirements

## SUBPART G: RELOCATIONS AND BRANCHING

Section  
 1075.700 General  
 1075.705 Application  
 1075.710 Request for Preliminary Determination  
 1075.715 Public Notice and Inspection  
 1075.720 Protest  
 1075.725 Oral Argument  
 1075.730 Application for the Maintenance of Branch Office after Conversion, Consolidation, Purchase of Assets or Merger  
 1075.735 Redesignation of Offices  
 1075.740 Termination of Operation and/or Closing of a Branch Office  
 1075.745 Agency Offices  
 1075.750 Remote Drive-In and/or Remote Pedestrian Facilities

## SUBPART H: CAPITAL NOTES AND DEBENTURES

## OFFICE OF BANKS AND REAL ESTATE

## NOTICE OF ADOPTED AMENDMENTS

Section  
 1075.800 Approval  
 1075.810 Conversion to Stock  
 1075.820 Priority of Claim

SUBPART I: ADMINISTRATIVE HEARING PROCEDURES

Section  
 1075.900 Applicability  
 1075.905 Definitions  
 1075.910 Early Neutral Evaluation  
 1075.915 Conference Adjudicative Hearing  
 1075.920 Filing  
 1075.925 Form of Documents  
 1075.930 Computation of Time  
 1075.935 Appearances  
 1075.940 Notice of Hearing  
 1075.945 Service of the Notice of Hearing  
 1075.950 Motion and Answer  
 1075.955 Consolidation and Severance of Matters-Additional Parties  
 1075.960 Intervention  
 1075.965 Postponement or Continuance of Hearing  
 1075.970 Authority of Hearing Officer  
 1075.975 Bias or Disqualification of Hearing Officer  
 1075.980 Prehearing Conferences  
 1075.985 Discovery  
 1075.990 Subpoenas  
 1075.995 Conduct of the Hearing  
 1075.1000 Default  
 1075.1005 Evidence  
 1075.1010 Official Notice  
 1075.1015 Hostile Witnesses  
 1075.1020 Transcription of Proceedings  
 1075.1025 Briefs  
 1075.1030 Hearing Officer's Findings, Opinions and Recommendations  
 1075.1035 Order of the Commissioner  
 1075.1040 Rehearings  
 1075.1045 Existing Statutory or Agency Procedures and Practices  
 1075.1050 Costs of Hearing  
 1075.1055 Emergency Adjudication

## SUBPART J: SAVINGS BANK HOLDING COMPANIES

Section  
 1075.1100 Applicability  
 1075.1105 Definitions  
 1075.1110 Mutual Holding Company Reorganizations  
 1075.1111 Subsidiary Holding Company

OFFICE OF BANKS AND REAL ESTATE  
NOTICE OF ADOPTED AMENDMENTS

1075.1115	Prohibition Against Approval of Certain Applications for Reorganization
1075.1120	Contents of Reorganization Plans
1075.1125	Capital Stock (Repealed)
1075.1130	Charter (Repealed)
1075.1135	Control (Repealed)
1075.1140	Eligible Account Holder (Repealed)
1075.1145	Eligibility Record Date (Repealed)
1075.1150	Employee (Repealed)
1075.1155	Equity Security (Repealed)
1075.1160	Insured Institution (Repealed)
1075.1165	Member (Repealed)
1075.1170	Net Worth (Repealed)
1075.1175	Officer (Repealed)
1075.1180	Person (Repealed)
1075.1185	Qualifying Deposit (Repealed)
1075.1190	Sale (Repealed)
1075.1195	Security (Repealed)
1075.1200	Source Documents (Repealed)
1075.1205	Subsidiary (Repealed)
1075.1210	Liquidation Account and Proxies
1075.1215	Mutual Holding Company Ceasing to be a Depository Institution
1075.1220	Directors of a Mutual Holding Company
1075.1225	Stock Issuance Plan
1075.1230	Stock of a Subsidiary of a Mutual Holding Company
1075.1235	Stock Subsidiary Formation
1075.1240	Net Worth Maintenance Agreement (Repealed)
1075.1245	Members' Rights
1075.1250	Investment
1075.1255	Notice Requirement/Corrective Action
1075.1260	Insider Abuses
1075.1265	Determination of the Qualification and Condition of an Out-of-State Acquisition
1075.1270	Acquisition and Disposal of Subsidiaries
1075.1275	Dividend Limitations and Waivers
1075.1280	Officers and Directors List
1075.1285	Access to Books and Records
1075.1290	Annual Audit Requirements
1075.1295	Maintenance of Records
1075.1300	Notice of Appointment of Independent Accountants
1075.1305	Holding Company Filing Fees (Repealed)
1075.1310	Holding Company Supervisory Fees
1075.1315	Examination Fees
1075.1320	Conditions
1075.1325	Manner of Payment
1075.1330	Conversion of Mutual Holding Companies

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- 1075.2200 Application -- Application Requirements
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- 1075.2340 Proxy Statement -- Voting Rights and Vote Required for Approval
- 1075.2350 Proxy Statement -- Directors and Executive Officers
- 1075.2360 Proxy Statement -- Management Remuneration
- 1075.2370 Proxy Statement -- Business of the Applicant
- 1075.2380 Proxy Statement -- Description of the Plan of Conversion
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- 1075.2400 Proxy Statement -- Capitalization
- 1075.2410 Proxy Statement -- Use of New Capital
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- 1075.2430 Proxy Statement -- Other Matters
- 1075.2440 Proxy Statement -- Financial Statements
- 1075.2450 Proxy Statement -- Consents of Experts and Reports
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- 1075.2500 Offering Circular
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- 1075.2570 Offering Circular -- Information with Respect to Exercise of Subscription Rights
- 1075.2580 Offering Circular -- Information with Respect to Public Offering or Direct Community Offering

AUTHORITY: Implementing and authorized by the Savings Bank Act [205 ILCS 205].

\*SOURCE: Emergency Rules adopted at 14 Ill. Reg. 15029, effective September 4, 1990, for a maximum of 150 days; adopted at 15 Ill. Reg. 1916, effective January 25, 1991; amended at 16 Ill. Reg. 4891, effective March 16, 1992; amended at 17 Ill. Reg. 8894, effective June 7, 1993; expedited correction at

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- 17 Ill. Reg. 18223, effective June 7, 1993; emergency amendment adopted at 18 Ill. Reg. 7016, effective April 22, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 15094, effective September 26, 1994; emergency amendment at 19 Ill. Reg. 10277, effective June 29, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 15474, effective October 31, 1995; recodified from Chapter VIII, Commissioner of Savings and Residential Finance, to Chapter II, Office of Banks and Real Estate, pursuant to PA 89-508, at 20 Ill. Reg. 12645; amended at 22 Ill. Reg. 6719, effective MAR 30 1998.

SUBPART A: FILINGS

Section 1075.100 Filings

Filings pertaining to matters named hereafter shall be subject to the indicated fee pursuant to the Savings Bank Act ("the Act") [205 ILCS 205]. Such fee or fees shall be paid at the Office of Banks and Real Estate at the time of filing. Payment shall be by check, draft or money order made payable to the Office of Banks and Real Estate.

- a) Permit to Organize (Section 3001 of the Act).....\$ 1,000-00
- b) Merger (Section 8005 of the Act).....\$ 1,000-00
- c) Sale of Assets (Section 8010 of the Act).....\$ 1,000-00
- d) Amendment to Articles of Incorporation providing for the Issuance of Permanent Reserve Shares (Section 5004 of the Act) (Section 1075.400 of this Part).....\$ 1,000-00
- e) Conversion from Savings Bank Charter to any Federal Charter (Section 8001 of the Act).....One (1) times the last total annual Supervisory Fee calculated and assessed against the Savings Bank as set forth in Section 1075.130(a) and (b).
- f) Hearing or Oral Argument -- each applicant requesting a hearing or oral argument and/or each objector requesting a hearing or oral argument and/or each adversary participating in a hearing or oral argument (Section 9018 of the Act) (Sections 1075.725 and 1075.900 of this Part).....\$ 500-00
- Each applicant requesting a hearing or oral argument and/or each objector requesting a hearing or oral argument and/or each adversary participating in a hearing or oral argument shall bear its pro rata share of all expense incurred in said proceedings.
- g) Application for Subsidiary Acquisition Fee (Section 2004 of the Act).....\$ 250-00
- h) Conversion from Mutual to Capital Stock Form of Ownership (Section 5004 of the Act) (Subpart O of this Part)
- i) Acquisition of Control of a Savings Bank (Section 5002, 5004 and 5006 of the Act) (Subpart N of this Part)

.....\$ 500 57000-00



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- j) Permission-to-Sell-Capital-Stock-Purchased-by-a-Director-on-Original Issue-in-a-conversion-from-mutual-to-Stock-Form-of-Ownership-(Section 504-of-the-Act)-(Section-1075.1109(b))
- 1) Photocopies (per page per page).....\$ .25
- 2) Savings Bank Act (bound edition).....\$ 25.00
- 3) Rules (bound edition).....\$ 25.00
- 4) Annual Report (additional copies).....\$ 25.00
- 5) Mailing Labels.....\$ 35.00
- k) Holding Company Registration Fee  
(Section 2002 of the Act).....\$ 1,000
- l) Application for Subsidiary Acquisition Fee, Illinois Savings Bank Holding Company (Section 2004 of the Act).....\$ 250
- m) The following fees apply to mutual holding company transactions:
- 1) Mutual Holding Company Reorganization with resulting savings bank stock offered to party other than the mutual holding company (Section 2007 of the Act).....\$ 10,000
- 2) Mutual Holding Company Reorganization with no resulting savings bank stock offered to any party except the mutual holding company (Section 2007 of the Act).....\$ 3,000
- 3) Subsequent Offerings:
- A) First Offering of resulting Savings Bank stock to a party other than the Mutual Holding Company after reorganization described in subsection (m)(2) of this Section.....\$ 7,000
- B) All other Offerings to a party other than the Mutual Holding Company.....\$ 1,000
- 4) Conversion of Mutual Holding Company to Stock Holding Company (Section 2007 of the Act).....\$10,000

(Source: Amended at 22 Ill. Reg. 6719, effective 04-20-1998)

## Section 1075.130 Supervisory Fees

- a) The Commissioner shall receive and there shall be paid to the Commissioner by each savings bank and each service corporation operating under the Act, a fixed fee of \$450.00, plus a variable fee based on the total assets of each savings bank and each service corporation as shown on the financial report filed with the Commissioner for the reporting period of the prior calendar year ended December 31 according to the following schedule: 22.5¢ per \$1,000 of the first \$2,000,000 of total assets, 20.25¢ per \$1,000 of the next \$3,000,000 of total assets, 18.0¢ per \$1,000 of the next \$5,000,000 of total assets, 15.75¢ per \$1,000 of the next \$15,000,000 of total assets, 13.5¢ per \$1,000 of the next \$25,000,000 of total assets, 11.25¢ per \$1,000 of the next \$50,000,000 of total assets, 9.0¢ per \$1,000 of the next \$400,000,000 of total assets, 6.75¢ per \$1,000 of

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the next \$500,000,000 of total assets, and 4.5¢ per \$1,000 of all total assets in excess of \$1,000,000,000 of such savings bank or service corporation. In the situation where service corporations and/or finance subsidiaries are owned by the savings bank, the owned assets may be consolidated with the assets of the savings bank for calculation of this fee. If the finance subsidiary is not active and is in the form of a Collateralized Mortgage Obligation or a similar vehicle (Mortgage Backed Securities, Real Estate Mortgage Income Certificates, and other securitized debt instruments), the Commissioner shall waive that portion of the fee attributed to the finance subsidiary.

- b) The Commissioner shall receive and there shall be paid to the Commissioner by each savings bank a fee of \$450.00 for each approved branch office or facility office established under Subpart G of this Part. The determination of such fees shall be made annually as of the close of business of the prior calendar year ended December 31.
- c) One fourth of the sum of the supervisory fee so determined shall be remitted as billed by the Commissioner at the time of each calendar quarter-end: A calendar quarter-end shall mean--March--31--June--30--September--30--and--December--31. Such fees shall be for the respective current year.

- d) Supervisory fees shall be determined by the Commissioner within ninety (90) days following the close of the respective calendar year; however, the dates of billings shall not prejudice the validity of an invoice for any such fees billed at a later date.

- e) In the event the state charter is converted or otherwise surrendered during the year, the Commissioner shall determine the supervisory fee based on the total assets of the savings bank as of the month-end immediately preceding the cancellation of the state charter, except that the measurement date may be another date at the discretion of the Commissioner in the event a savings bank elects to liquidate. In determining whether to set another measurement date, the Commissioner shall consider the following elements: whether the savings bank is undergoing a planned liquidation (where a savings bank elects to not continue operations), or, the savings bank has transferred significant assets (more than 1/2 of 1 percent of the total assets at the previous measurement date).

- f) The Commissioner may waive part of the first annual supervisory fee specified under subsection (a) above, for a savings and loan association that has paid the fee for conversion to federal charter as required under the rules promulgated pursuant to the Illinois Savings and Loan Act of 1985 (38 Ill. Adm. Code 400.110(b)). Such waiver, if any is granted, shall be in accordance with the following schedule:

- 1) for conversions that were completed less than twelve (12) months but greater than six (6) months before the issuance of a savings bank charter, 25 percent may be waived; and
- 2) for conversions that were completed less than six (6) months before the issuance of a savings bank charter, 50 percent may be



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waived.  
(Source: Amended at 22 Ill. Reg. 6719, effective  
MAR 30 1998)

Section 1075.140 Adjusted Supervisory Fees

- a) The Commissioner shall receive and there shall be paid to the Commissioner an additional fee as an adjustment to the supervisory fee specified in Section 1075.130 of this Part, to be based upon the difference between the total assets of each savings bank and each service corporation as shown by its financial report filed with the Commissioner for the reporting period of the calendar year ended December 31 on which the supervisory fee was based, and the total assets of each savings bank and each service corporation as shown by its financial report filed with the Commissioner for the reporting period of the calendar year ended December 31 in which the quarterly payments referred to in Section 1075.130 of this Part are made according to the following schedule: 22.5¢ per \$1,000 of the first \$2,000,000 of total assets, 20.25¢ per \$1,000 of the next \$3,000,000 of total assets, 18.0¢ per \$1,000 of the next \$5,000,000 of total assets, 15.75¢ per \$1,000 of the next \$15,000,000 of total assets, 13.5¢ per \$1,000 of the next \$25,000,000 of total assets, 11.25¢ per \$1,000 of the next \$50,000,000 of total assets, 9.0¢ per \$1,000 of the next \$400,000,000 of total assets, 6.75¢ per \$1,000 of the next \$500,000,000 of total assets, and 4.5¢ per \$1,000 of all total assets in excess of \$1,000,000,000 of such savings bank or service corporation. In the situation where service corporations and/or finance subsidiaries are owned by the savings bank, the owned assets may be consolidated with the assets of the savings bank for calculation of this fee. If the finance subsidiary is not active and is in the form of a Collateralized Mortgage Obligation or a similar vehicle, the Commissioner shall waive that portion of the fee attributed to the finance subsidiary.
- b) Adjusted supervisory fees shall be remitted as billed by the Commissioner on March 31 of the next calendar year. In the event the total assets of each savings bank and each service corporation as reported on the earlier financial report are more than the total assets as reported on the later annual report, the Commissioner shall credit the next quarterly remittance of the supervisory fee in the same proportion.
- c) In the event the state charter is converted or otherwise surrendered during the year, the Commissioner shall determine the supervisory fee based on the total assets of the savings bank as of the month-end immediately preceding the cancellation of the state charter, except that the measurement date may be another date at the discretion of the Commissioner in the event a savings bank elects to liquidate. In determining whether to set another measurement date, the Commissioner

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shall consider the following elements: whether the savings bank is undergoing a planned liquidation (where a savings bank elects to not continue operations); or, the savings bank has transferred significant assets (more than 1/2 of 1 percent of the total assets at the previous measurement date).

(Source: Amended at 22 Ill. Reg. 6719, effective  
MAR 30 1998)

Section 1075.141 Special Credit

The Commissioner shall issue a credit memorandum which each savings bank operating under the provisions of the Illinois Savings Bank Act [205 ICs 205] may use to offset balances owed from the Supervisory Fee calculated in Section 1075.140 of this Part. The credit shall be calculated based on the total assets reported by each savings bank as of December 31, 1996 as follows: 2.25¢ per \$1,000 of the first \$2,000,000 of total assets; 2.025¢ per \$1,000 of the next \$3,000,000 of total assets; 1.8¢ per \$1,000 of the next \$5,000,000 of total assets; 1.575¢ per \$1,000 of the next \$15,000,000 of total assets; 1.35¢ per \$1,000 of the next \$25,000,000 of total assets; 1.125¢ per \$1,000 of the next \$50,000,000 of total assets; .9¢ per \$1,000 of the next \$400,000,000 of total assets; and .675¢ per \$1,000 of the total assets in excess of \$1,000,000,000 of such savings bank. In addition, the credit shall include a fixed amount of \$400.

(Source: Amended at 22 Ill. Reg. 6719, effective  
MAR 30 1998)

SUBPART C: REPORTS

Section 1075.310 Financial Reports

Each savings bank shall file monthly and quarterly financial reports on such forms as are prescribed by the Commissioner. Such reports shall be delivered to the Commissioner by the last twentieth (20th) day of the month following the month--end--or--fiscal quarter end for which the report applies. Any savings bank that fails to submit required reports in the time prescribed by this Section shall be subject to fine as provided for in the Act.

(Source: Amended at 22 Ill. Reg. 6719, effective  
MAR 30 1998)

SUBPART D: OPERATIONS

Section 1075.400 Capital Stock (Repealed)

- a) A savings bank proposing to adopt an amendment to its Articles of Incorporation to provide for the issuance of capital stock pursuant to

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Section 5004 of the Act shall comply with Section 40027-50037 and 0001 of the Act. In addition, the following shall be filed with the Commissioner:

- 1) the certified copy of the board of directors' resolution adopting the proposed amendment to the Articles of Incorporation, which amendment shall incorporate the Plan of Conversion from mutual to stock form of ownership; and
- 2) one copy of all forms, filings and amendments thereto necessary to comply with applicable Federal Deposit Insurance Corporation regulations;
- b) Upon receipt of all documents enumerated in subsection (a) above, the Commissioner shall issue a Certificate of Approval of amendment to the Articles of Incorporation.

(Source: Repealed at 22 Ill. Reg. \_\_\_\_\_, effective 06/30/1998)

## Section 1075.430 Maintenance of Records

To enable the Commissioner to examine a savings bank, holding company, service corporation or affiliate of a savings bank pursuant to Section 9004 of the Act, each savings bank shall establish and maintain accounting and other records of all business transacted, and the documents, files and other materials comprising such records shall at all times be available for examination wherever any of such files, documents or materials may be. At a minimum, a savings bank and service corporations shall establish and maintain the following records.

- a) Disbursement Records
 

A savings bank's funds shall be disbursed in accordance with a resolution adopted by the board of directors and reviewed at least annually. Each disbursement shall be documented to show the date, the amount and the purpose of the disbursement and the names of the person or persons or other entities receiving such disbursements whether paid directly, indirectly or through an escrow.
- b) Record Retention
  - 1) Before approving any loan or issuing any commitment, a savings bank shall determine that every person that proposes to become liable to the savings bank has the financial ability to service the proposed debt. The procedure for determining the financial capacity of every person that proposes to become liable to the savings bank shall be in accordance with procedures adopted by the board of directors and reviewed at least annually. Thereafter, a savings bank shall retain the application and other documentation supporting each loan, as well as the complete servicing record, as part of the records of the savings bank throughout the duration of the savings bank's investment in the respective loan.
  - 2) A savings bank shall retain each rejected loan application and

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the information in support thereof for a period of thirty-six (36) months following such rejection.

- c) The Savings Bank shall:
  - 1) require every borrower that is:
    - A) a trust to provide a certification by the trustee listing the current beneficiaries of the trust;
    - B) a corporation to provide a certification by the corporate secretary listing the names and percentage of ownership of all 10 percent or more shareholders; and
    - C) a partnership to provide a certified list of partners.
  - 2) retain such documents as a part of the savings bank's records and that shall be maintained throughout the duration of the savings bank's investment in the respective loan.
- d) The approval for any loan or other investment made or to be made by a savings bank shall be given only by persons authorized by a resolution adopted by the board of directors at least annually. The conditions of approval and the signature of the person or persons granting such approval shall become a part of the savings bank's records.
- e) No disbursement shall be made on any loan or other investment until the loan or other investment is entered on the books of the savings bank and is in compliance with this Part.
- f) Loan Registers
  - 1) A savings bank shall maintain one or more loan registers which shall contain the original entry and be a permanent record, and shall show for every loan the account number, date of the loan, amount of the loan, name of the borrower, nature of security by types, the amount of fees, the amount of the note, including precomputed loans, rate of interest, the term of the loan, and such other information as desired by the savings bank.
  - 2) All loan registers shall be kept numerically by number of loans in order made.
- g) Loans Secured By Real Estate
  - 1) An application for the loan, signed by the borrower or its agent, in such form and containing such information as will disclose the purpose for the loan, that is construction, purchase, refinancing, and the identity of any security property.
  - 2) A note evidencing the borrower's debt to repay the amount of the loan, executed by the borrower or its agent.
  - 3) A copy of the deed of trust or mortgage instrument on the real estate or other document customarily used in the jurisdiction in which the real estate security is located, evidencing the creation of a security interest in the real estate for the benefit of the lender, which deed of trust, mortgage instrument, or other document has been signed by the borrower or the borrower's agent; and, if the loan is made to finance the purchase of the real estate security for the loan, a signed statement by the borrower or its agent, as part of or as an



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attachment to the application for the loan, disclosing the purchase price of such real estate security.

- 4) the lender or its agent and for the lender's use, and signed before the approval of such application (except in the case of an approval conditioned upon obtaining an appraisal) that satisfies the requirements of Section 6801 of the Act, or, if such loan is an insured loan or a guaranteed loan, a certification of the valuation assigned to real estate security by the appraiser accepted by the insuring or guaranteeing agency and furnished to the lender by such agency. Loans of less than \$250,000 may be supported by estimates of value other than an appraisal, such as in-house appraisals and valuations, previous appraisals, tax assessments, tax assessment valuations, and insurance evaluations.
- 5) Documentation showing the financial ability of the borrower to repay the loan, or a written credit report prepared by the savings bank or by others at the request of the savings bank.
- 6) Documentation showing when and by whom such loan was approved and any terms of such approval.
- 7) Documentation showing the date, amount, purpose, the recipient of every disbursement of the proceeds of such loan, and to the best of the lender's knowledge, any actual recipient of any proceeds when the stated recipient is acting as an agent or intermediary for another.
- 8) An opinion signed by the lender's attorney, a title insurance policy, or other documentary evidence customarily used in the jurisdiction in which the real estate security is located, affirming the quality and validity of the lender's lien on the real estate security for the loan.
- 9) Documentation showing that the savings bank, upon the closing of the loan, furnished to the borrower, a loan settlement statement setting forth in detail the charges or fees the borrower has paid or is obligated to pay to such savings bank or to any other concern or person in connection with the loan, which documentation shall include a copy of the loan settlement statement.
- 10) A record showing the status and current payment of taxes, assessments, insurance premiums, other charges on the security for the loan, and documenting any loss incurred on the loan security, as well as any amounts recovered pursuant to an insurance settlement of such loss.
- 11) Documentation evidencing any modifications of the original documents by which a security interest for the benefit of the lender was created, showing appropriate approval of each party to such modification.
- 12) Documentation evidencing any release of any portion of the collateral pledged to secure the loan, showing the portion of the

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collateral released, the consideration, if any, paid to effect such release, and a record of the appropriate approval of each such release.

- f) Loans Not Secured By Real Estate  
The records with respect to each unsecured loan or loan not secured by real estate that the savings bank makes shall include the documents referred to in subsection (g) above which are relevant to the loan. If the loan is secured by collateral other than real estate, the lender's records also shall include documents evidencing the creation and perfection of a security interest in the collateral, including any financing statement. In addition, if the loan is made to a business entity, the records shall include documentation showing whether the obligor on the loan can generate sufficient cash flow to meet scheduled interest and debt reduction payments, and if not sufficient, the records shall include documentation demonstrating the anticipated source of the borrower's payments.
- i) Records With Respect to the Acquisition of Mortgaged Security  
A savings bank shall maintain a record which discloses every instance that it commences action to acquire the real estate security for a loan by foreclosure or otherwise, and the ultimate disposition of such action. Such record shall include identification of the real estate security and loan, shall itemize all fees and charges incurred in such action, shall name the recipient or recipients to whom any such fees and charges were paid, and shall identify the holder of title to such real estate as a result of such action.
- j) Records With Respect to Deposit Accounts  
The records of a savings bank with respect to each deposit account it issues shall include the signature of the owner of such account or the duly authorized representative of such owner together with a record reflecting the balance in such account. Notwithstanding the preceding requirement, no account signature card for a trust executed by its trustee(s) of information disclosing the names of the settlor or trustee(s) of the trust need be maintained in the record of a savings bank.
- k) Minutes of Meetings  
All minutes of meetings of the board of directors, committees of the board of directors, and management committees shall be maintained at the corporate offices of the savings bank. All minutes of meetings of the board of directors of a savings bank shall be recorded in books with prenumbered pages. The use of any non-consecutively numbered page shall be supported by a signed affidavit from the corporate secretary indicating the reason for the use of non-consecutively numbered pages.
- g) Transfer of Records  
A savings bank shall not transfer the location of any of its general accounting or control records from its home office to a



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branch or other office, or from a branch or other office to its home office or to another branch or office unless the savings bank has sent prior written notice of such transfer to the Commissioner.

## h) Data Processing

- 1) A savings bank which maintains its records by a data processing service shall, before establishing such service, notify the Commissioner in writing. Such notice shall be delivered at least ninety (90) days before the date on which such maintenance of records will begin. Such notification shall include identification of the records to be maintained by data processing services and a statement as to the location at which such information will be maintained. Any contract shall expressly provide that the records to be maintained by such services shall at all times be available for examination by the Commissioner.

- 2) A savings bank's data processing service center shall provide, annually, a copy of the third party audit review, if performed.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1998)

## Section 1075.480 Manner of Display of Annual Meeting Notice

Notice as required pursuant to Section 4003(a) of the Act shall be prominently displayed and take such form as required in the following: a) on a sign, poster, or paper no smaller in size than 9-1/2 inches by 11 inches; b) with bold print no smaller than 12 points; and c) located in plain view of customers at each business location with at least one (1) copy on or near each door or entrance accessible to the general public.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1998)

## SUBPART E: INVESTMENTS

## Section 1075.505 Investment Underwriting Practice

A savings bank may grant a loan or invest in other authorized assets under the Act.

- a) For all types of secured and unsecured loans granted, and other investments entered into, a savings bank's board of directors shall establish and approve, at least annually, written loan underwriting and other investment policies and procedures. These policies and procedures shall set forth criteria sufficient to allow a decision to be made in accordance with Section 1075.500 of this Part.

- b) Documentation for each loan and other investment shall identify the specific statutory and/or regulatory provision under which it was approved.

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b) A loan or other investment may be apportioned among appropriate categories, and may be moved, in whole or part, from one category to another as follows.

- 1) To classify a loan as a real estate loan, a savings bank must rely substantially upon the real estate as the primary security for the loan.
- 2) For purposes of determining whether aggregate investments under this Part exceed an applicable percentage-of-assets limitation, a loan commitment shall be counted as an investment and shall be included in total assets of a savings bank only to the extent that funds have been advanced (and not repaid) pursuant to the commitment. The term "loan commitment" used in the preceding sentence includes a loan in process, a letter of credit, or any other commitment to extend credit.

- 3) Loans sold to a third party shall be included in calculation of a percentage-of-assets investment limitation only to the extent they are sold with recourse.

- 4) A savings bank may make a loan secured by assignment of loans to the extent that it could, under applicable law and regulations, make or purchase the underlying assigned loans.

c) The written policies and procedures pertaining to loans secured by collateral other than real estate, mobile home chattel paper, or the cash surrender value of life insurance shall provide specific procedures for determining the value of the respective collateral. The procedures shall provide that every appraiser or reappraiser shall be made by an independent qualified appraiser designated by the board of directors. The appraiser must be properly licensed and certified by the entity authorized to govern licensure and certification of appraisers and must meet the requirement of the Appraisal Subcommittee pursuant to the financial institutions reform and recovery act and Enforcement Act of 1989 (12-075-Cr-9391-et-seq) as defined in Section 6001(g) of the Act.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1998)

## Section 1075.515 Loans Secured by Real Estate

- a) A savings bank may originate, invest in, sell, purchase, service, participate, or otherwise deal in (including brokerage or warehousing) real estate loans or interest in such loans.
- b) In determining compliance with the maximum loan-to-value limitations specified in Subpart E of this Part, a savings bank shall add to the loan amount the total of all other existing liens or other encumbrances on the security property having priority over the savings bank lien (including the lien to be established by the savings bank but excluding liens that will be released as the result of payments made from the proceeds of the new loan).

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- c) At the time of origination, a real estate secured loan granted under the provisions shall not exceed the maximum loan-to-value ratio as follows.

1) At the time of origination, a real estate loan may not exceed 95 percent of the market value of the security property. A savings bank shall, by a vote of its board of directors, establish maximum loan-to-value ratios for loans made on the security of real estate and the resolution adopting such ratios shall be included in the minutes of the directors' meeting. Home loans made on the combined security of real estate and savings accounts may be made in excess of the maximum loan-to-value ratios adopted pursuant to this Section with such excess secured by the savings account. However, for loans originated in excess of 90 percent of the initial appraised value of the security property, the savings account shall consist only of funds belonging to the borrower, the borrower's family, or the borrower's employer.

1) 2) With respect to home loans originated or refinanced in excess of 90 percent of the appraised value of the security property, that part of the unpaid balance that exceeds 80 percent of the property's value shall be insured or guaranteed by a mortgage insurance company that the Office of Banks and Real Estate has determined to be a "qualified private insurer."

2) 3) With respect to all other loans on the security of real estate originated in excess of 90 percent of the appraised value of the security property, a savings bank's board of directors, or loan committee, shall approve each such loan before its origination and such approval, or ratification of the loan committee approval, shall be recorded in the minutes of its meeting.

3) 4) In determining compliance with the maximum loan-to-value ratio limitations for real estate loans, at the time of making a loan a savings bank shall add together the unpaid amount, or in the case of a line-of-credit loan the approved credit limit, of all recorded loans secured by prior mortgages, liens or other encumbrances on the security property that would have priority over the savings bank's lien, and shall not make such a loan unless the total amount of such loans (including the one to be made but excluding loans that will be paid off out of the proceeds of the new loan) does not exceed the applicable maximum loan-to-value ratio limitations prescribed in subsection (c) above. In valuing the real estate security, a savings bank may shall use the current appraised value of the security property, which may include any expected value of improvements to be financed. "Value" for a real estate loan means the market value of the real estate. For loans granted pursuant to Section 6002(3) of the Act, alternative methods of valuation or other procedures that result in an estimate of value may be used.

5) At origination, the loan balance may not exceed the maximum loan-to-value ratios established pursuant to this Part. During

- the term of the loan, the loan-to-value ratio may increase above the maximum permissible percentage if the increase results from an adjustment authorized by subsection (e) or subsection (f)(1) above. The Office of Banks and Real Estate will assume continued compliance with the loan-to-value limitations where the original ratio met the requirements of subsection (e) above, but in no event may the loan balance exceed 100 percent of the original appraised value of the property during the term of the loan, unless pursuant to subsection (e)(6)(B)(i) of this Section or unless the loan contract provides that the payment shall be adjusted at least once every five (5) years, beginning not later than the tenth (10th) year of the loan, to a level sufficient to amortize the loan at the then existing interest rate and loan balance over the remaining term of the loan. If at maturity of a home loan that provides for adjustments pursuant to subsection (e)(6) of this Section, the ratio of the loan balance to the current market value of the security property exceeds the maximum permissible under this Part, the savings bank may offer to to refinance the loan if:

A) it complies with subsection (e)(2) above, and

B) the loan contract requires that, in addition to full or partial amortization of the loan, the pro rata portion based on the number of installments due annually of estimated annual taxes and assessments on the security property be paid in advance to the savings bank with each installment payment.

6) Adjustments for any home loan secured by borrower-occupied property or property to be occupied by the borrower, adjustments to the interest rate, payment, balance or term to maturity shall comply with the limitations of subsection (e)(5) above.

A) Adjustments to the interest rate shall correspond directly to the movement of an interest rate index or of a national or regional index that measures the rate of inflation or the rate of change in consumer disposable income, which index is readily available to and verifiable by the borrower, and is beyond the control of the savings bank. A savings bank also may increase the interest rate pursuant to a formula or schedule that specifies the amount of the increase, the time at which it may be made, and which is set forth in the loan contract. A savings bank may decrease the interest rate at any time.

B) Adjustments to the payment and the loan balance that do not reflect an interest rate adjustment may be made if:

1) the adjustments reflect a change in a national or regional index that measures the rate of inflation or the rate of change in consumer disposable income, is readily available to and verifiable by the borrower, and is beyond the control of the savings bank;



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ii) in the case of a payment adjustment, the adjustment reflects a change in the loan balance or is made pursuant to a formula or to a schedule specifying the percentage of dollar change in the payment as set forth in the loan contract; or

iii) in the case of an open end line of credit loan, the adjustment reflects an advance taken by the borrower under the line of credit and is permitted by the loan contract.

e) Any combination of indices or a moving average of index values may be used as an index, and a savings bank may use more than one index during the term of a loan if set forth in the loan contract.

B) In the case of an open end line of credit loan, notice of an adjustment to the payment or the balance need not be given if the adjustment reflects advances taken by the borrower under the line of credit and advance notice of a change in the interest rate permitted by the loan contract (and any resulting change in the payment) need not be given in the case of a non or partially amortized loan (including a loan with a "call" provision) a savings bank shall provide the borrower with notice of maturity at least ninety (90) but not more than one hundred twenty (120) days before the date of expected maturity.

B) The loan term may be adjusted only to reflect a change in the interest rate, the payment or the loan balance. A loan contract may provide a savings bank with the right to call the loan due and payable either after a specified number of years has elapsed following closing or upon the occurrence of a specified event external to the loan.

d) The loan-to-value limitations specified in subsection (c) above shall not apply to the following.

1) To loans guaranteed or insured wholly or in part by the United States or any of its instrumentalities.

2) To loans or contracts made to finance the purchase of real estate owned which has been acquired by the savings bank through default on a prior investment provided that the minutes of directors' meetings substantiate that such sale is made in compliance with the following:

A) the board of directors approved the specific terms of the loan or contract before the savings bank's issuance of a letter of commitment. If no letter of commitment is to be issued, such approval shall be before the execution of a note, mortgage, or contract for deed between the purchaser and the savings bank; and

B) the board of directors' resolution of approval of the respective sale specifically indicates why the sale is in the best interest of the savings bank and that said approval

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is given after duly considering the provisions of Subpart E of this Part;

C) the resolution identifies the specific documentation they have utilized in determining that the sale was in the best interest of the savings bank; and

D) all documentation used in evidencing compliance with Subpart E of this Part is retained as a part of the records of the savings bank for so long as the savings bank has a direct or indirect interest in the respective real estate.

3) Loans or contracts having additional eligible collateral pledged in an amount equal to that part of the loan or contract which is in excess of the lending limitations specified in subsection (c) above. Eligible collateral means:

A) any investment permissible for savings banks under the the Act;

B) any savings or time deposit in a commercial bank which deposit is insured by the Federal Deposit Insurance Corporation and not under control of any supervisory authority; or

C) the cash surrender value of a life insurance policy validly assigned to the savings bank.

(Source: Amended at 22 Ill. Reg. 0719, effective 09/01/1999)

## Section 1075.520 Construction Loans

Construction lending policies and procedures shall provide that

a) No disbursements shall be made unless in conformity with a sworn contractor's statement or amended statement, which statement or amended statement shall comply with the mechanics' lien laws of the State in which the collateral property is located and shall be kept on file at the savings bank throughout the duration of the savings bank's investment in the respective loan.

b) No construction funds shall be disbursed before receipt of a written statement indicating that the work for which payment is being requested has been completed. Such written statement shall be furnished by a person authorized by the board of directors.

c) No construction funds shall be disbursed unless approved by the borrower or the borrower's authorized agent. A blanket authorization may be accepted.

d) The savings bank shall at all times retain construction funds sufficient to complete the improvements in accordance with the contractor's sworn statement or amended statement. A savings bank may take into consideration equity provided by the borrower in the form of labor.

e) Waivers of mechanics' liens shall be required and shall be delivered to the savings bank or its agent before each disbursement of



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construction funds unless a lien free form of title insurance policy is obtained before such disbursement.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1996)

Section 1075.525 Mobile Home Financing (Repealed)

- a) Manufactured--Home-Chattei-Paper---the-term-"manufactured-home-chattel paper"--means-a document-evidencing-an installment-sales-contract-or-a loan--or--interest-in-a loan--secured-by-a lien-on-one-or-more manufactured-homes-and-equipment-installed-or-to-be-installed-therein.
- b) Manufacture's-Invoice-Price---the-term-"manufacturer's-invoice-price" means-a manufacturer's-itemized-charges, shown-on-its-invoice--for-a specifically-identified-manufactured-home-furnishings-equipment-and accessories-installed-by-the-manufacturer-and-freight.
- i) General-Investment-Authority---pursuant-to-Section-6002-of-the Act-a-savings-bank-may-invest-in-manufactured-home-chattel-paper and-interests-therein-without-limitation-as-to-percentage-of assets.
- 2) Inventory-Financing---a-savings-bank-may-invest-in-manufactured home-chattel-paper-which-finances-a-manufactured-home-dealer's acquisition-of-inventory-if:
- A) the-inventory-is-held-for-sale-by-the-dealer-in-its-ordinary course-of-business;
- B) the-loan-evidenced-by-the-chattel-paper-is-the-dealer's debt;-and
- C) the-loan-amount-does-not-exceed-the-following:
- i) for-new-manufactured-homes---95-percent---of manufacturer's-invoice-price--for--each-manufactured home-and-equipment-to-be-installed-by-the-dealer;-or
- ii) for-used-manufactured-homes, 75-percent-of-appraised market-value-or-other-generally-accepted-valuation-of each-manufactured-home-including-installed-equipment.
- 3) Retail-Financing
- A) Insured-and-Guaranteed-Boans---a-savings-bank-may-invest-in retail-manufactured-home-chattel-paper-that-is-insured-or guaranteed;-or-that-has-a-commitment-for-such-insurance--or guarantee.
- B) Conventional-Boans---a-savings-bank---may---invest-in conventional-retail-manufactured-home-chattel-paper-if:
- i) the-manufactured-home-is-located--at--a-manufactured home-park-or-other-permanent-or-semi-permanent-site;
- ii) the-manufactured-home-chattel-paper-is-payable-within twenty-(20)-years;-in-monthly-payments-which-are substantially-equal-except-to-the-extent-that-the financing-complies-with-mortgage-provisions-authorized under-the-Act-and-Section-1075.515-of-this-Act;-and

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- iii) the-financed-amount-(excluding-time-price-differential or-interest-however-computed)-does-not-exceed-in-the case-of-a-new-manufactured-home, 90-percent-of-the buyer's-total-costs,-including-freight,-itemized set-up-charges,-sales-or-other-taxes,-fitting-and recording-fees-imposed-by-law-and-premiums-for-related insurance;-or-in-the-case-of-a-used-manufactured home, 90-percent-of-appraised-market-value--or--other generally-accepted-valuation-of-the-manufactured-home plus-sales-and-other-taxes,-fitting-and-recording-fees imposed-by-law,-premiums-for-related-insurance,-and freight-and-itemized-set-up-charges-if-any.
- e) Combination-Boans---a-savings-bank-may-invest-in manufactured-home-chattel-paper-secured-by-combinations-of manufactured-homes-and-lots-on-the-following-terms:
- i) Affixed-Manufactured-Homes---if-the-wheels-and-axles have-been-removed-and-the-manufactured-home-is permanently-affixed-to-a-foundational-loan-secured-by a-combination-of-manufactured-home-and-lot-on-which-it sits-may-be-treated-as-a-home-loan.
- ii) Unaffixed-Manufactured-Homes---if-the-manufactured home-is-not-affixed-in-the-manner-described-in subsection-(f)(3)-(E)-above,-a-savings-bank-may make-a-loan-secured-by-a-combination-of-manufactured home-and-lot-on-which-it-is-or-is-to-be-located-if-the financing-complies-with-the-requirements-of-subsection (f)(3)(B)(i)-above-and-the-loan-to-value-ratio-does not-exceed-75-percent-of-the-appraised-value-of-the lot-and-lot-improvements-and-90-percent-of-the-buyer's total-costs-of-the-manufactured-home-for-valuation-of used-manufactured-home)-as-defined-in-subsection (f)(3)(B)-above.

- 4) Sale-of-Paper---all-manufactured-home-chattel-paper-sold-by-a savings-bank-shall-be-sold-without-recourse.

(Source: Repealed at 22 Ill. Reg. 6719, effective MAR 30 1996)

Section 1075.530 Overdraft Loans

A savings bank may extend secured or unsecured credit to cover the payment of checks, drafts, or other funds transfer orders in excess of the available balance of an account on which they are drawn, provided that the total of such extensions-of-credit-plus-unsecured-or-secured-loans-for-business-corporate commercial-or-agricultural-purposes-does-not-exceed-15-percent-of-total-assets.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1996)

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## Section 1075.535 Education Loans

A savings bank may shall invest, not to exceed 5 percent of its total assets in loans, debts, and advances of credit made for the financing of primary, secondary, undergraduate or post-graduate education.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1998)

## SUBPART F: SERVICE CORPORATION AND OPERATING SUBSIDIARIES

## Section 1075.600 Requirements

- a) No savings bank shall invest in or lend to a service corporation as defined in Section 1007.105 of the Act unless said service corporation has been approved by the Commissioner.
- b) Subpart F of this Part shall not apply to investments in single-purpose corporations authorized under Sections 1008(9) and 6009 of the Act.
- c) Savings banks may designate subsidiaries as operating subsidiaries as follows:

- 1) Upon approval of the Commissioner, a majority-owned and controlled subsidiary of a savings bank may be designated as an operating subsidiary provided that the subsidiary engages solely in activities that are permitted for a savings bank.

- 2) An operating subsidiary shall not be subject to the provisions pertaining to service corporations. Loans made by the savings bank to the operating subsidiary shall not be subject to Section 6013 of the Act.

- 3) A savings bank's total investment, including equity and debt securities and loans, in any operating subsidiary may not exceed the following level:

- A) if the savings bank owns and controls more than 50% but less than 75% of the operating subsidiary's stock, the investment level shall not exceed 20% of the savings bank's total capital unless a greater amount is authorized in writing by the Commissioner;

- B) if the savings bank owns and controls 75% but less than 100% of the operating subsidiary's stock, the investment level shall not exceed 50% of the savings bank's total capital unless a greater amount is authorized in writing by the Commissioner; and

- C) if the savings bank owns and controls 100% of the operating subsidiary's stock, no investment limit shall apply.

- 4) Upon approval of the Commissioner, a subsidiary of an operating subsidiary may be designated as an operating subsidiary; provided that the lower tier subsidiary is wholly-owned and controlled by the upper tier operating subsidiary and engages solely in

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activities that are permitted for a savings bank.

5) Upon approval of the Commissioner, an operating subsidiary may invest in or lend to a service corporation, as defined in Section 1007.105 of the Act, to the same extent as a savings bank.

6) As used in this subsection (c):

"Subsidiary" means a corporation, limited liability company, partnership, business trust, joint venture, pool, syndicate or other similar business organization.

"Majority-owned" means the savings bank owns more than 50% of the voting interest (or similar controlling interest) of the subsidiary.

"Control" means effective operating control.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1998)

## SUBPART G: RELOCATIONS AND BRANCHING

## Section 1075.700 General

- a) A branch office of a savings bank is any office other than its home office, drive-in facility, pedestrian facility, agency office, or a remote service unit.
- b) Any business of a savings bank may be transacted at a branch office. When a branch office provides any product, it must have all the resources necessary to support that product offering at the branch location.
- c) A savings bank shall not establish a branch office nor change the location of its home office unless its respective application has been approved by the Commissioner. An application shall be approved only if the Commissioner finds that:
  - 1) the office can be established at the proposed location without undue injury to properly conducted existing savings banks or other existing financial institution;
  - 2) the policies and financial condition of the applicant are not a basis for supervisory objection; and
  - 3) the proposed office will open within twelve--~~4~~ 12 months of approval unless occupancy is delayed by circumstances beyond the control of the applicant and, consequently, additional time is allowed by the Commissioner.
- d) A savings bank proposing a change of location of its home office or branch office may request a waiver of the otherwise applicable requirements of Subpart G of this Part. The request will be approved only if:
  - 1) the Commissioner can make the same findings as those required at



subsubsection (c) above;the applicant demonstrates that the area to be served from the proposed location is essentially the same as that served from the present location;the applicant gives the reason(s) for the change of location; andthe applicant submits a request which sets forth information sufficient to allow the making of all determinations required by subsection (d) above.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1996)

2) If requested by the applicant, the Commissioner shall approve a temporary location of a home office or a branch office if the temporary location is:

1) in the immediate vicinity of the approved permanent location; and2) not more competitive to any other properly conducted existing savings bank than the approved permanent location.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1996)

Section 1075.720 Protest

Protests, answers to protests and other related communications shall be in writing and submitted only as provided in this Section.

- a) Within ten--t 10t calendar days following the date of publication of Notice of Application (or twenty--t 20t calendar days after the date of publication if extension is requested in writing within such ten--t 10t day period) any person may file a communication in favor or protest of the application with the Commissioner. Any person filing such a communication shall simultaneously furnish a copy to the applicant.
- b) Within fifteen--t 15t calendar days after receipt of a protest, the objector and the applicant shall be advised in writing whether the Commissioner considers the protest to be substantial.
- c) No protest shall be considered "substantial" unless it is in writing, filed on time, and contains at least the following:
- 1) a summary of the reasons for the protest;
- 2) the specific matters in the application to which objection is raised and the reasons for each objection;
- 3) facts supporting the protest, including relevant economic or financial data; and
- 4) adverse effects on the objector which may result from approval of the application.

- d) The Commissioner's determination as to whether a protest is "substantial" shall be made on the basis of data showing undue injury to properly conducted existing savings bank(s) or--other--financial institutions--t and/or data disputing the propriety of information set forth in the respective application.
- e) Within twenty--t 20t calendar days following the date of notice that a protest has been considered substantial, the applicant may file an answer to such protest with the Commissioner.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1996)

Section 1075.730 Application for the Maintenance of Branch Office after Conversion, Consolidation, Purchase of Assets or Merger

a) With written approval of the Commissioner, a savings bank which acquires an office or offices through merger, purchase, purchase of all assets or consolidation shall assume the operation of any such acquired office(s)--subject-to--Section--1075-740--of--this--Part. An existing financial institution which converts to a savings bank shall maintain all of its offices, existing or approved before the conversion.--if--such-offices-are-set-forth-in-its-bylaws--adopted-in accordance-with-Section-0001-of-The-Act--0ffices--set--forth--in--its bylaws--shall-be-subject-to-Section-1075-740-of-this-Part.

- b) If the Commissioner has approved a Plan of Conversion from a savings bank charter for a savings bank or has evidence of a savings bank's intent to file such Plan of Conversion, he shall deny an application for a branch office.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1996)

Section 1075.750 Remote Drive-In and/or Remote Pedestrian Facilities

a) A savings bank may, without prior approval of the Commissioner other than approval of an appropriate bylaw amendment, establish a remote drive-in and/or remote pedestrian facility in conjunction with each savings bank business office. Each such facility may be designed to simultaneously accommodate more than one customer.

- b) The term "business office" means the business office premises including non-remote drive-in and/or non-remote pedestrian facilities which are those facilities within the boundaries of real estate on which a home office or any branch office is located and the areas contiguous thereto which the savings bank has the exclusive right as owner or lessee to use or maintain for ingress or egress or for parking in connection with that business office.
- c) Remote drive-in and remote pedestrian facilities are defined as follows:
- 1) A remote drive-in facility is a facility which is not located on the premises of a business office as defined in subsection (b) above and at which the customer transacts business from a vehicle.
- 2) A remote pedestrian facility is a facility which is not located on the premises of a business office as defined in subsection (b) above and at which the customer need not enter an office but may remain outside the structure and transact business with a teller located inside the structure.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1996)



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- d) Remote drive-in and remote pedestrian facilities shall be initially located within the following limitations: 1) Remote drive-in and/or remote pedestrian facilities must be initially located not more than 1500 feet from a business office of the establishing savings bank; and such initial location must be closer to a business office of the establishing savings bank than to a business office of any other savings bank or financial institution. 2) Such a facility may be placed in a store or location of some other business if the savings bank's quarters are used exclusively for the conduct of the savings bank's business. There will be no objection to a remote pedestrian facility which faces on an enclosed mall and serves pedestrians who remain in the mall while transacting business with the savings bank.
- e) Functions which are routinely performed by the establishing savings bank's tellers at its business office(s) may be performed at a remote drive-in and/or remote pedestrian facility; however, the acceptance of a completed loan application is prohibited.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 31 1993)

## SUBPART J: SAVINGS BANK HOLDING COMPANIES

## Section 1075.1100 Applicability

- a) Subpart J of this Part shall apply to stock holding companies or savings banks that directly or indirectly own or control or seek to own or control 25 percent or more of the voting shares or rights of any insured institution in any manner and to mutual holding companies and mutual savings banks reorganizing as mutual holding companies. This Subpart does not apply when such ownership arises in the regular course of business as set forth in Section 2001.05 of the Act.
- b) Except with the permission of the Commissioner and the Federal Reserve Board (FRB), no company shall become a savings bank holding company.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 31 1993)

## Section 1075.1105 Definitions

"Acquiree savings bank" means any subsidiary savings bank, other than a resulting savings bank, that is acquired by a mutual holding company as part of, and concurrently with, a mutual holding company reorganization and is in mutual form immediately prior to such acquisition.

"Affiliate" means any company that controls, is controlled by, or is under common control with a person.

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"Assets" means the total assets of the savings bank minus goodwill and any other intangible assets, including but not limited to, purchased deposit base and branch network, and leasehold improvements net of accumulated depreciation.

"Books-of-records" means where the original accounting entries are recorded, presented, etc., and maintained as a part of an accounting number finally presented in the financial statements of an entity. Examples include check registers, loan registers, cash disbursements ledgers, capital asset ledgers, general ledgers, working trial balances.

"Capital stock" includes permanent stock, guaranty stock, permanent reserve stock, any similar certificate evidencing non-withdrawable capital, preferred stock, or convertible preferred stock of a savings bank created or acquired under this Subpart or of a subsidiary, institution or holding company.

"Charter" includes articles of incorporation, articles of reincorporation, or any similar instrument, as amended, effecting (either with or without filing with any government agency) the organization or creation of an incorporated or unincorporated person.

"Company" means a corporation or partnership, a savings bank, a joint stock company, a trust or an unincorporated organization.

"Control" is defined as it is in Section 1007.35 of the Act.

"Eligible account holder" means any person holding a qualifying deposit as of a given date.

"Eligibility record date" shall mean the record date for determining eligible account holders of an institution.

"Employee" does not include a director or an officer.

"Equity security" means any stock or similar security or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such security, or any such warrant or right.

"Insured institution" shall, for purposes of this Subpart, include any institution with accounts insured by the Federal Deposit Insurance Corporation (FDIC).

"Member" means any person qualifying as a member of an insured institution pursuant to its charter or bylaws.

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"Mutual savings bank" means a mutual savings bank organized and operating under the Act.

"Net worth" means the aggregate of capital stock accounts, capital surplus and retained earnings accounts and all other reserve accounts except valuation reserves and specific reserves which are in the nature of valuation reserves.

"Person" means an individual, a company, or a government or political subdivision thereof.

"Pre-existing depository institution" means a subsidiary depository institution that is not an acquiree savings bank, a resulting savings bank or a savings bank in mutual form when acquired.

"Purchase" and "Buy" include every contract to purchase, buy, or otherwise acquire a security or interest in a security for value.

"Qualifying deposit" means a deposit determined pursuant to Section 1075.1935 of this Part.

"Reorganizing savings bank" means a mutual savings bank that proposes to reorganize to become a mutual holding company pursuant to this Subpart.

"Resulting savings bank" means a savings bank in stock form that is organized as a subsidiary of a reorganizing savings bank to receive the substantial portion of the assets, all the insured deposits, and part or all of the other liabilities of the reorganizing savings bank.

"Sale" and "Sell" include every contract to sell or otherwise dispose of a security or interest in a security for value; but these terms do not include an exchange of securities in connection with a merger or acquisition approved by the Commissioner.

"Security" includes any stock, note, treasury stock, bond, debenture, transferable share, investment contract, voting trust certificate, or, in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant, or right to subscribe to or purchase any of the foregoing.

"Source--documents"---means documents which record the transaction of a business event, such as a sale of inventory, a purchase of--a capital asset,--establishment of a debt, or receipt of goods ordered---Typical source documents include--sales--invoices--bills--of--sale--purchase orders--and--delivery--tickets---Periodic invoices and statements of account--are also examples of source documents.

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"Stock" means common or preferred stock, or any other type of equity, security, including (without limitation) warrants or options to acquire common or preferred stock, or other securities that are convertible into common or preferred stock.

"Subsidiary" of a specified person is an affiliate company--controlled by---the---person,---directly---or---indirectly---through---one---or---more intermediaries.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1998)

Section 1075.1110 Mutual Holding Company Reorganizations

A mutual savings bank may reorganize to become a mutual holding company, or join in a mutual holding company reorganization or thereafter as an acquiree savings bank or a pre-existing depository institution, only upon satisfaction of the following conditions:

- A Reorganization Plan is approved by a majority of the board of directors of the reorganizing savings bank and any acquiree savings bank or pre-existing depository institution.
- A Reorganization Notice is filed with the Commissioner and the Commissioner has given written notice of its approval of the proposed reorganization as being in accordance with applicable law.
- The Reorganization Plan is submitted to the members of the reorganizing savings bank and any acquiree pursuant to a proxy statement cleared in advance by the Commissioner and such Reorganization Plan is approved by a majority two-thirds of the total votes of the members of each savings bank eligible to be cast at a meeting held at the call of each savings bank's directors in accordance with the procedures prescribed by each savings bank's charter and bylaws. When the Reorganization Plan involves acquiring a pre-existing depository institution, the Plan is submitted to the stockholders of the pre-existing depository institution and is approved by the majority of the total votes of the shareholders eligible to be cast at a meeting held at the call of the institution's directors in accordance with the institution's charter and bylaws.
- All necessary regulatory approvals have been obtained and all requirements of this Subpart are met.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1998)

Section 1075.1111 Subsidiary Holding Company

As part of a mutual holding company reorganization or thereafter, a mutual holding company may establish a subsidiary stock holding company which shall



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wholly own and control the resulting savings bank and any acquiree savings banks. A subsidiary holding company shall be subject to Sections 1075.1225 and 1075.1330 as if it were a resulting savings bank. The subsidiary holding company shall be subject to Section 1075.1275(c) as if it were the mutual holding company and the mutual holding company shall remain subject to Section 1075.1275(c). The Commissioner may impose other requirements to ensure that the members of the resulting savings bank and any acquiree savings bank have the same rights, opportunities, and protection as if no subsidiary stock holding company been established.

(Source: Added at 22 Ill. Reg. 0719, effective MAR 30 1998)

### Section 1075.1115 Prohibition Against Approval of Certain Applications for Reorganization

No application for reorganization may be approved by the Commissioner if:

- The plan of reorganization adopted by the applicant's board of directors is not in accordance with this Subpart;
- The reorganization reasonably could be expected to result in a resulting or acquiree savings bank or pre-existing depository institution with capital below requirements established by the Commissioner and by Federal law;
- The reorganization results in a taxable reorganization under the United States Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) and the Commissioner upon a written finding determines that the reorganization will endanger the safety and soundness of a resulting or acquiree or pre-existing preexisting savings bank; or
- A resulting savings bank does not secure insurance of its deposits accounts backed by the full faith and credit of the United States government before reorganization.

(Source: Amended at 22 Ill. Reg. 0719, effective MAR 30 1998)

### Section 1075.1210 Liquidation Account and Proxies

- Each mutual savings bank converting to form a holding company must establish a "liquidation account" for members of the mutual savings bank before conversion. The liquidation account may be maintained at a holding company level or by the savings bank. The total amount allocated to the liquidation account shall be equivalent to the amount of stock issued to the holding company by the stock subsidiary upon infusion of assets and liabilities to the stock subsidiary.
- Each member of the liquidation account who maintains an account in the stock subsidiary savings bank(s) shall be entitled, upon liquidation of the mutual holding company, to a fractional share of the value of the mutual holding company. The numerator of the fractional share

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shall be the amount of qualifying deposits in the member's account on the record eligibility date, which date shall be set by the board of directors in their plan of Conversion and/or application to form a mutual holding company, and/or the supplemental eligibility record date and the denominator of the fractional share shall be the total amount of qualifying deposits of all eligible and supplemental eligible account holders in the converting mutual savings bank on the eligibility record date. Any plan to liquidate the mutual holding company must be approved by the Commissioner and must satisfy all claims of creditors, including liquidation account holders. Any remaining value in the mutual holding company shall be transferred to the capital accounts of the subsidiary stock savings bank(s).

- All proxies previously executed and assigned by members of the mutual savings bank converting to form a holding company shall remain valid and effective without impairment as long as the member maintains an account in the new stock savings bank.
- A liquidation account need not be established under this Section if one is established under Section 1075.1225 and Subpart O of this Part.

(Source: Amended at 22 Ill. Reg. 0719, effective MAR 30 1998)

### Section 1075.1220 Directors of a Mutual Holding Company

- Each new board of directors for the mutual holding company shall be selected by vote of members, in a process to be determined by the bylaws of each entity.
- Each board of directors shall have at least five (5) members.
- Sections 4008, 4009, 4010, and Article 11 of the Act shall apply to a mutual holding company with regard to directors' vacancies, directors' attendance at meetings, qualifications to be a director, enforcement powers, and similar matters, except that the mutual holding company may file a written request for waiver of compliance with any provision with the Commissioner. Such request must provide detailed discussion of the grounds for such request. In determining whether to grant a waiver of compliance, the Commissioner shall consider the following factors, including, but not limited to:
  - whether where applications of those provision to mutual holding companies would be inappropriate because the provisions are where drafted for savings banks;
  - whether where a mutual holding company and its subsidiary meet or exceed all applicable capital requirements and are not in violation of any statutes or rules;
  - whether where there are pending no-current contested or regulatory matters; and
  - whether where waiver would work undue hardship or result in undue advantage or risk, prejudicing a situation currently or in the future.



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- d) Upon creation of the resulting savings bank, the board of directors of the reorganizing savings bank shall nominate a board of directors for the resulting savings bank.
- e) A mutual holding company may provide for cumulative voting for directors in its bylaws.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1993)

Section 1075.1230 Stock of a Subsidiary of a Mutual Holding Company

- a) A resulting savings bank shall issue shares to the holding company only after sufficient assets to match transferred deposit liabilities are transferred to the resulting savings bank and, if applicable, an acquiree savings bank and after written confirmation of continuation of insurance of accounts is received from the deposit insurance corporation appropriate--Federal--Depository--insurance--Corporation (FDIC)--or--its--agent.
- b) Stock issuance shall initially be only common stock, but other classes of stock may be issued upon application to and approval by the Commissioner.
- c) Each share of common stock shall entitle its owner to one vote.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1993)

Section 1075.1240 Net Worth Maintenance Agreement (Repealed)

- a) The Commissioner shall require a mutual holding company to execute a "Net-Worth-Maintenance-Agreement" for each subsidiary depository institution. Under this Agreement the holding company shall contractually agree to infuse equity capital as needed to maintain capital at a predetermined level for each subsidiary depository institution. The Agreement shall:
  - 1) be for a specified term and set a capital requirement at a level capital risk (the risk from normal internal operations of the savings bank), market volatility (external risk to the savings bank's operations generated by uncontrolled factors such as equity and bond markets, money supply, inflation), and stock ownership patterns (such as common voting common, voting preferred, non-voting preferred, etc.);
  - 2) explicitly consent to the Commissioner's authority to require infusion of additional equity capital when he determines the savings bank fails to meet its capital requirements;
  - 3) explicitly give the Commissioner the right to vote and dispose of the stock of any subsidiary institutions whose capital is not restored within five (5) business days of the Commissioner's

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- 4) determination of the need for additional capital, and establish procedures to effectuate subsection (a)(3) above including provision of notice to all affected parties and selection of time and place at which the vote and disposition will occur.
- b) The Commissioner's right to vote stock shall include all shareholder matters, including the right to remove and replace the board of directors, the right to merge the savings bank and the right to sell the stock.
- e) The Commissioner shall base determination of a capital deficiency upon:
  - 1) reports from the subsidiary savings bank or the mutual holding company, and/or
  - 2) audited financial statement of the mutual holding company or the subsidiary savings bank, and/or
  - 3) examination, including examination by another government regulator, or a federal deposit insurance company, of the mutual holding company or the subsidiary savings bank.
- d) In determining adequacy of capital, the Commissioner shall review and examine the financial condition of entities which are affiliates or subsidiaries of the holding company, and of the subsidiary savings bank, if there is a determination by the Commissioner that the subsidiary activity of the holding company represents a higher level of risk to the savings bank than existed before the application of the holding company formation, a higher capital amount shall be required and the basis of the Commissioner's decision shall be communicated in writing within thirty (30) days to the savings bank and holding company.
- e) All infusions to capital under this Section must be in cash or cash equivalent instruments such as overnight deposits and federal funds.

(Source: Repealed at 22 Ill. Reg. 6719, effective MAR 30 1993)

Section 1075.1245 Members' Rights

Rights of members of the resulting savings bank, acquiree savings bank, and any savings banks in the mutual form when acquired shall be transferred to the mutual holding company, except that a savings bank may eliminate borrowers' rights in the process of forming the holding company by incorporating a new definition of membership in the holding company's and subsidiaries' Articles of Incorporation. Each depositor in the resulting savings bank, an acquiree savings bank, and any savings banks in the mutual form when acquired shall be a member of the mutual holding company and shall have one vote for each \$100.00 of value of each account; notwithstanding the foregoing restriction, a mutual holding company may upon giving notice to the Commissioner limit the number of votes cast by any persons to 1000 votes unless the Commissioner finds upon review of relevant law and facts, the limitation is inequitable to depositors.

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(Source: Amended MAR 30 1998) 22 Ill. Reg. 6719, effective

## Section 1075.1270 Acquisition and Disposal of Subsidiaries

- a) As permitted by the Act, the rules promulgated thereunder, and applicable federal law, a mutual holding company, with approval of its board of directors, the Commissioner, and its members, may:
  - 1) acquire control of, or make non-controlling investments in the stock of, a stock depository institution or stock depository institution holding company;
  - 2) acquire a mutual savings bank or savings bank, upon approval of acquiree's board of directors and members, pursuant to a merger into the resulting savings bank, into an acquiree savings bank, or into another savings bank that was in the mutual form when acquired or with a bridge charter;
  - 3) acquire a mutual savings bank or savings bank holding company, upon approval of the acquiree's board of directors and members, by merging with the mutual savings bank holding company;
  - 4) acquire control of, or make non-controlling investments in the stock of, other corporations.
- b) A stock holding company may make acquisitions or investments or enter into mergers as permitted by the Act, the rules promulgated thereunder, and applicable federal law with approval of its board of directors, the Commissioner and its stockholders.
- c) Each holding company disposing of a subsidiary shall give not less than thirty (30) days prior notice of such planned disposition to the Commissioner. Disposal of a subsidiary must be approved by the Commissioner.
- d) The Commissioner shall approve a transaction contemplated by this Section upon finding that the transaction complies with applicable law, has received necessary approvals under federal law, and is not inequitable to members or injurious to a savings bank.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1998)

## Section 1075.1285 Access to Books and Records

The Commissioner shall have access to subsidiaries' and holding companies' books and records. ~~It shall be subject to the Act, the Illinois Business-Corporations-Act-1995-1995-57, and the Illinois-Freedom-of-Information Act-1975-1995-1401. Access to the books and records of savings banks held as subsidiaries shall be subject to Section 4013 of the Act.~~

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1998)

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## Section 1075.1305 Holding Company Filing Fees (Repealed)

Filings pertaining to matters named hereafter shall be subject to the indicated fee. Such fee shall be paid at the Office of Banks and Real Estate at the time of filing. Payment shall be by check, draft, or money order made payable to the Office of Banks and Real Estate.

- a) Registration fee  
(Section 2002 of the Act) ----- \$17,000-00-
- b) Conversion of Charter  
(Article 9 of the Act) ----- \$27,500-00-  
(Although conversion may occur if a state-chartered savings bank is held by the holding company will still have to be licensed by the Office of Banks and Real Estate.)
- c) Hearing or Oral Argument --- each applicant requesting a hearing or oral argument --- and/or each objector requesting a hearing or oral argument --- \$500-00-  
(Section 9018 of the Act) ----- \$-500-00-  
Each applicant requesting a hearing or oral argument and/or each objector requesting a hearing or oral argument shall bear its pro-rata share of all expenses incurred in said proceedings.
- d) Application for Subsidiary Acquisition Fee --- Illinois Savings Bank Holding Company  
(Article 2005 of the Act) ----- \$-250-00-  
Mutual Holding Company Reorganization (This Subpart) ----- \$107,000-00-
- e) Mutual Holding Company Reorganization (This Subpart) ----- \$107,000-00-

(Source: Repealed at 22 Ill. Reg. 6719, effective MAR 30 1998)

## Section 1075.1330 Conversion of Mutual Holding Companies

With approval of the Commissioner, upon a finding by the Commissioner that the conversion complies with applicable law, has received necessary approvals under federal law, and is not inequitable to members or injurious to a savings bank, a mutual holding company may convert to a capital stock holding company. Any capital stock issued and offered for sale by a converting holding company shall be offered in accordance with Subpart 0 of this Part except that:

- a) The words "mutual savings bank" shall refer to mutual holding company.
- b) Section 1075.2170 of this Part shall not apply unless a subsidiary depository institution does not meet applicable capital requirement and the mutual holding company is unable to meet the requirements of the applicable net worth agreement entered into under Section 1075.1240 of this Part.
- c) Requirements in Subpart 0 of this Part for filing presentation or disclosure of financial, regulatory operations or management information shall apply to either the mutual holding company or its subsidiaries, or both, whichever filing, presentation or disclosure provides, as determined by the Commissioner, the most complete



description of the mutual holding company and its subsidiaries.

d) Stock issued pursuant to Section 1075.1225 of this Subpart may be exchanged for stock issued by the mutual holding company in a conversion of the mutual holding company to stock form under this Section if the mutual holding company demonstrates that the exchange is equitable to the subsidiary depository institution and the mutual holding company members.

e) The Commissioner may waive a requirement of Subpart O of this Part upon a finding that such waiver is not injurious or inequitable to the mutual holding company or its subsidiaries, that it is not inequitable to members or eligible account holders, that the conversion, if the waiver is granted, provides the equivalent protections and opportunities as a conversion that fully complies with Subpart O of this Part and this Section, and that no other course of action that fully complies with Subpart O of this Part and this Section exists.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1998)

SUBPART K: CONVERSION OF AN EXISTING DEPOSITORY INSTITUTION INTO AN ILLINOIS SAVINGS BANK

Section 1075.1410 General Rules for Conversion Plan

- a) An application for conversion shall be approved only if the Commissioner finds that:
- 1) the conversion plan adopted by the applicant's board of directors or trustees (hereinafter "board"), and all documentation submitted in support of the application for conversion complies with the provisions of these regulations, the Act, and other applicable provisions of law;
  - 2) the resulting savings bank will operate in a safe, sound and prudent manner;
  - 3) the conversion plan will result in a savings bank that has adequate capital, and satisfactory management and earnings prospects as prescribed in the Act;
  - 4) the owners and directors of the converting depository institution and of the resulting savings bank are qualified by character and financial responsibility to legally and properly control and operate the proposed savings bank to be formed as a result of the conversion plan;
  - 5) the converting depository institution has taken steps to obtain insurance of accounts from the deposit insurance corporation;
  - 6) the conversion plan is equitable to account holders, borrowers, creditors, employees or stockholders and is in the public interest; and
  - 7) the converting institution has paid all outstanding bills for supervisory fees, examination fees, and penalties associated with

- its original charter.
- b) The experience and the performance record of the persons to be in control or in key management positions shall be evaluated by the Commissioner as to the probability of sound operation of the resulting savings bank.
  - c) The Commissioner shall make the same investigation and determine the same questions as would be required by law to make and determine in the case of the submission to the Commissioner of an Articles of Incorporation for a proposed new Illinois savings bank.
  - d) A conversion plan shall be approved if it is in compliance with applicable state and federal law.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1998)

Section 1075.1415 Adopting and Filing of a Conversion Plan

- a) The board of directors of an existing depository institution desiring to convert in accordance with these regulations shall adopt a conversion plan at a meeting of such board of directors.
- b) Upon the adoption of the conversion plan as provided in subsection (a) above, an existing depository institution shall file with the Commissioner three copies of the application for approval of a Plan of Conversion, which shall include the conversion plan and each document required to be part of the conversion plan. The application shall be in the form required by the Commissioner.
- c) An application for approval of a conversion plan shall be on forms prescribed by the Commissioner, contain:
  - 1) certification by the presiding officer and/or secretary of the depository institution of the resolutions of the board of directors adopting the conversion plan and authorizing the filing of the application for approval of the conversion plan;
  - 2) a copy of the conversion plan, signed by the president of the depository institution and attested by its secretary;
  - 3) a duly adopted amendment to the bylaws of the depository institution specifying that notwithstanding any contrary provision of its bylaws, its conversion from its present original status to an Illinois savings bank shall be in accordance with the provisions of the Act and the rules promulgated thereunder;
  - 4) a proposed set of amended or restated Articles of Incorporation as an Illinois savings bank, and
  - 5) such other information as the Commissioner may require upon written notice to the converting depository institution.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1998)



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## Section 1075.1420 Conversion Plan Requirements (Repealed)

- a) The Plan of Conversion shall:
- 1) state the business purposes to be accomplished by the Plan of Conversion including why the board of directors believes the conversion would be in the best interest of the existing depository institution and the public;
  - 2) set forth the terms of the conversion and the manner in which it is to be accomplished;
  - 3) provide a business plan of the resulting savings bank for the three-year period following the conversion. The plan shall contain the following:
    - A) introduction;
    - B) mission statement;
    - C) corporate objectives;
    - D) corporate strategies;
    - E) financial projections including annual pro forma balance sheet statements of financial condition and income and expense reports; and
    - F) proposed charter, Articles of Incorporation and by-laws.
  - 4) list the names and addresses of directors and officers including all officers through the level of vice president or any others with equivalent responsibility or power of the converting depository institution. Also, if the converting institution contemplates changes of the directors or officers upon becoming a savings bank, then the names and addresses of such persons shall be provided. For all named persons, provide any annual directors and officers reports filed with any regulatory authority for the last five (5) years before the date of this conversion plan.
  - 5) each person listed in subsection (a)(4) above shall disclose his or her affiliations with insured depository institutions and their subsidiaries and affiliates for the last five years including advances of credit of more than \$50,000 equity investments of more than 10% of outstanding stock, service as a director or officer, and any business relationship which generated more than \$10,000 per year or an aggregate of \$50,000 per relationship in cash or other items of measurable value.
  - 6) each person listed in subsection (a)(4) above shall execute and submit as part of the conversion plan, an affidavit setting forth all felony convictions and civil or administrative sanctions and all involvement in pending litigation pertaining to them.
  - 7) provide the names and addresses of all persons or entities that own or control, hold with the power to vote or hold proxies representing 10 percent or more of the shares of the converting depository institution;
  - 8) provide the names and addresses and telephone numbers for all offices and branches of the applicant;
  - 9) provide all documents in connection with any transfer or

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- conversion to a stock institution by converting institution within the three (3) years preceding application for approval of a conversion plan;
- 10) provide that the conversion plan adopted by the applicant's board of directors may be substantively amended by the board as a result of the comments of regulatory authorities and at any time with the approval of the Commissioner, and that the conversion may be terminated by the board at any time;
  - 11) establish a time period within which the conversion must be completed. The completion date shall not be completed more than six (6) months from the date that the board of directors approves the plan and shall not be extended by the converting institution without approval of the Commissioner;
  - 12) set forth the sequence and timing of the events connected with the conversion plan;
  - 13) list the estimated expenses of the conversion to the applicant and provide that expenses incurred shall be reasonable;
  - 14) furnish an opinion of the applicant's counsel as to compliance with all applicable requirements of state and federal law;
  - 15) furnish an opinion of the applicant's tax advisor or certified public accountant or an Internal Revenue ruling as to the tax consequences of the conversion plan to the applicant and, if applicable, to account holders or share holders;
  - 16) furnish to the applicant an opinion of the applicant's tax advisor or certified public accountant or an Internal Revenue ruling as to the tax consequences of the conversion plan under the laws of Illinois;
  - 17) furnish an opinion of the applicant's certified public accountant regarding the appropriateness of the accounting treatment for the transaction and the conformity of such accounting treatment to generally accepted accounting principles except where other accounting principles are imposed by the Federal financial institution regulatory agency that oversees the depository institution and states that those principles are utilized in the preparation of the statements prepared in accordance with the conversion plan;
  - 18) provide a set of audited financial statements including a balance sheet, statement of financial condition and income and expense report as of the fiscal year immediately preceding the date of adoption by the applicant's board of directors of the Plan of Conversion;
  - 19) provide the latest quarterly and monthly reports of condition that are required by the financial institution regulatory agency that oversees the converting depository institution;
  - 20) provide, if applicable, copies of all approvals and notices required by federal law in connection with the conversion, and provide minutes of the meeting of shareholders of the applicant institution authorizing the conversion, including notice to the

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- shareholders proxy material, and conversion plan as submitted to the shareholders, certified by the presiding officer or secretary of the meeting;
- b) If the converting depository institution is chartered pursuant to Federal law, the conversion plan shall, in addition to the requirements of subsection (a) above:
- 1) provide true copies of the last two (2) supervisory examination reports of all Federal financial institution regulatory agencies authorized to oversee the converting depository institution including all supervisory correspondence and responses to such correspondence;
- 2) provide for the period of the three (3) years preceding the adoption of the conversion plan by the board of directors, true copies of all supervisory orders issued by any Federal financial institution regulatory agency in connection with such agency's supervision of the converting depository institution;
- 3) provide for the period of the three (3) years preceding the adoption of the conversion plan by the board of directors, true copies of all supervisory agreements entered into by any Federal financial institution regulatory agency and the converting depository institution; and
- 4) provide a true copy of the latest quarterly report of condition such as Thrift Financial Report or Quarterly Call Report filed with any Federal financial institution regulatory agency by the converting depository institution;
- 5) provide for the period of the three (3) years preceding the adoption of the conversion plan by the board of directors, true copies of the annual Federal disclosures and all other reports, disclosures and correspondence filed with any Federal financial institution regulatory agency by the converting depository institution;
- c) If, under Federal or State law, the converting depository institution is considered to be owned or controlled by a depository institution holding company, in addition to the applicable requirements of subsection (a) and (b) above, the conversion plan shall include:
- 1) the names and addresses of all holding company directors and officers, including all officers through the level of vice president and all others with equivalent responsibility or power;
- 2) the names and addresses of all persons or entities that own or control, hold with power to vote, or hold proxies representing 10 percent or more of the voting shares of the holding company, and the names and addresses of all affiliates and subsidiaries of the holding company;
- d) The Commissioner may, upon request of the applicant, and where consistent with the protection of account holders and others, permit the omission of items herein required or the substitution of comparable items. The Commissioner may also require the inclusion of

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other items in addition to or in substitution of the items herein required in any case where such items are necessary or appropriate for an adequate presentation of the financial condition of any person or entity whose financial statements or reports are required, or whose statements or reports are otherwise necessary for the protection of account holders and others;

(Source: Repealed at 22 Ill. Reg. 0719, effective MAR 30 1990)

Section 1075.1425 Vote by Shareholders and Members (Repealed)

- a) Shareholders and members shall vote on the conversion plan as follows:
- 1) The conversion plan shall not be submitted to eligible shareholders or members until the plan is approved by the Commissioner;
- 2) Notwithstanding subsection (a)(1) above, a converting institution the stock of which is listed or traded on a securities exchange including national or regional exchanges or the National Association of Securities Dealers Automated Quotation system (NASDAQ), may seek approval of the conversion plan by eligible shareholders prior to the Commissioner's approval of the plan. Shareholders shall be given notice that no plan may be effected without the Commissioner's approval. If the Commissioner finds that, after gaining shareholder approval, the plan has undergone any substantive change, the plan as changed must be approved by eligible shareholders;
- b) The voting record date for determining whether a shareholder or depositor is eligible to vote shall not be more than forty (40) days nor less than ten (10) days before the date such vote is taken. Upon application to the Commissioner and for good cause shown an applicant may dispense with mailed notice of the date of vote for conversion to depositors and shareholders. In cases where notice is mailed to eligible depositors and shareholders, each mailed notice shall include at least a summary statement of the plan of conversion, the proposed ballot or proxy and a copy of the proposed Articles of Incorporation. Each notice whether mailed, posted or published shall state the time, place and governing rules for the vote;
- d) Each person holding one or more withdrawable accounts entitling the holder to voting rights shall have the vote of one share for each \$100.00 of aggregate withdrawable value of the accounts and shall have the vote of one share for any fraction of \$100.00, except that any member of a mutual institution chartered with a Federal Charter-K Revised may not cast more than 50 votes in keeping with the provisions of said charter;
- e) Each holder of capital stock held shall have one vote for each share held;
- f) Shares owned by the applicant depository institution shall not be



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counted or voted:

- g) Approval of a conversion plan shall require an affirmative vote by a majority of the votes cast by the applicant's eligible voters.
- h) Notwithstanding the provisions of subsections (a) through (g) above, if the converting depository institution is chartered under federal law, approval of a conversion plan by the members or stockholders of the converting depository institution shall be obtained in the manner prescribed by applicable federal law.
- i) The converting depository institution must submit a certification by the presiding officer and/or secretary of the depository institution that the conversion plan and the revised Articles of Incorporation have been approved by the shareholders of the depository institution, together with the following information:
- 1) the total number of votes eligible to be cast;
  - 2) the total number of votes cast;
  - 3) the total number of votes approving or rejecting the applicant's conversion plan; and
  - 4) adopting the revised Articles of Incorporation;
  - 5) the percentage of votes cast to approve such Plan of Conversion and adopt the revised Articles of Incorporation; and
  - 6) the date on which the vote was held.

(Source: Repealed at 22 Ill. Reg. 6719, effective MAR 30 1998)

## Section 1075.1450 Directors of Resulting Savings Bank

The persons named as directors in the Plan of Conversion amended Certificate of Incorporation shall be the directors of the resulting savings bank until the first election of directors thereafter, or until the expiration of their terms as directors, and shall have the power to take all necessary measures and to adopt regulations concerning the business and management of the resulting converted savings bank.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1998)

## SUBPART L: SUPERVISION

## Section 1075.1510 Purchase of Offices (Repealed)

- a) A savings bank seeking to purchase an office or other facility to provide depository and credit services to the public at that site under its own name must apply to the Commissioner as though the site will be a de novo branch under Subpart G of this Part.
- b) A savings bank seeking to purchase a facility or facilities from another financial institution must make application as required under Subpart G of this Part.

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(Source: Repealed at 22 Ill. Reg. 6719, effective MAR 30 1998)

## Section 1075.1520 Bridge Charters

- a) A savings bank may apply to the Commissioner for authority to form a "bridge charter" to facilitate a corporate restructuring or voluntary change, only on condition that an additional savings bank is not created. Organization of a bridge charter shall not be subject to the requirements of Article 3 of the Act.
- b) The Commissioner may only authorize the formation of an interim savings bank charter under this Section. An applicant desiring another type of financial institution charter shall apply for same to the regulator appropriate to that charter.
- c) Each application shall specify the purpose of the interim charter, the required end result, the ownership size, capital business plan, management structure, and duration of the initial, interim and final savings bank.
- d) An applicant for an interim charter under this Section shall inform the Commissioner of any transaction contemplating use of an interim Charter at least ninety (90) days before the closing date of the transaction.

- e) Except to the extent established by the original savings bank, no interim charter may do retail business with the public; advertising; make purchases; pay salaries, bonuses, fees or obligate to hire, or contract.

- f) An interim charter may exist for no more than three (3) days which may not be business days. On a normal business day, an interim charter may not be in existence for more than the time required to sign or otherwise finalize documents.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1998)

## Section 1075.1530 Unsafe and Unsound Practices

- a) If the Commissioner receives notice of failure to renew or of cancellation of the bond required by Section 4009(a) of the Act, or if such bond is determined, from examination or from reports made by the savings bank, to be inadequate when compared:

- 1) with the amounts of such bond carried by savings banks of comparable capital size, pursuing similar investment policies and similar management capabilities; or
- 2) with amounts required by its federal insurer of accounts, he or she shall immediately pursue one of the remedies enumerated in Articles 9 and 10 of the Act.
- b) In implementing Section 1082, "Policy and Purpose" of the Act, the Commissioner shall take into consideration the standards and policies



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of--the--Federal--Deposit--Insurance--Act--and--the--rules--promulgated thereunder--

(Source: Amended at 22 Ill. Reg. 0710, effective 01/01/1998)

## SUBPART N: ACQUISITION OF CONTROL OF SAVINGS BANK

## Section 1075.1700 Acquisition of Control of Savings Bank

a) As used in this Section, the following definitions apply:

- 1) "Affiliate" means any company that controls, is controlled by, or is under common control with a person.
- 2) "Company" means a corporation, a partnership, an association, a joint stock company, a trust or an unincorporated organization.
- 3) "Control" means the ability of any person, entity, persons, or entities acting alone or in concert with one or more persons or entities, to own, hold, or direct with power to vote, or to hold proxies representing, 10% or more of the voting shares or rights of a savings bank, savings bank subsidiary, savings bank affiliate, or savings bank holding company; or the ability to achieve in any manner the election or appointment of a majority of the directors of a savings bank. This definition shall not apply to the voting of proxies obtained from depositors if the proxies are voted as directed by a majority of the board of directors of the savings bank or of a committee of directors when the committee's composition and powers may be revoked by a majority vote of the board of directors.
- 4) "Person" means an individual, a company or a group acting in concert.
- 5) "Associate", when used to indicate relationship with any person, means:
  - A) any corporation or organization (other than the applicant or a wholly owned subsidiary of the applicant) of which such person is an officer or partner or is, directly or indirectly, either alone or together with one or more members of his or her immediate family, the beneficial owner of 10% or more of any class of securities;
  - B) any trust or other estate in which the person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity;
  - C) any relative or spouse of such person or any relative of such spouse, who has the same home as such person or who is a director or officer of the savings bank or a related entity; or
  - D) anyone who has an agreement, arrangement, or understanding, with such person, the purpose or effect of which is to enable the person to enter into and consummate any

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transaction described in subsection (m) below on terms more advantageous than had the transaction been entered into or consummated by a person who was not a party to such agreement, arrangement, or understanding.

- 6) "Savings Bank Holding Company" means any company which directly or indirectly or through one or more subsidiaries controls a savings bank.
- b) It is unlawful for any person to acquire control of a savings bank or related entity unless acquired pursuant to this Section. Any acquisition of control in violation of this Section shall be ineffective and void.
- c) Application to acquire control of a savings bank shall be made to the Commissioner. The application shall be under oath or affirmation, and shall contain substantially all the following information plus any additional information that the Commissioner may prescribe as necessary or appropriate in the particular instance for the protection of depositors, borrowers, or stockholders and the public interest.
  - 1) The identity and banking and business experience of each person by whom or on whose behalf the acquisition is to be made, including, but not limited to, his or her business activities and affiliations during the past ten years, and a description of any pending legal or administrative proceedings in which he or she is a party and any criminal indictment or any conviction of such person by any state or federal court.
  - 2) If not entirely described in subsection (c)(1) above, for each person by whom or on whose behalf the acquisition is to be made, any past (for the past ten years), present or proposed affiliation with an insured depository institution including, but not limited to, any past, present or proposed employment and all affiliation or connection of the kind described under the definition of "affiliated person of a savings bank or insured institution" as defined in this Section.
  - 3) A statement of the assets and liabilities, including contingent liabilities, of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five years immediately preceding the date of the notice; including statements of income, and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied; and an interim statement of the assets and liabilities, including contingent liabilities, for each such person, including related statements of income, and source and application of funds, as of a date not more than 90 days before the date of the filing of the notice.
  - 4) The terms of the proposed acquisition and the manner in which the acquisition is to be made.
  - 5) The identity, source and amount of the funds or other consideration used, or to be used, in making the acquisition. If

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any part of these funds or other consideration has been or is to be borrowed or otherwise obtained to make the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons.

- 6) Any plans or proposals which any acquiring party may have to liquidate the bank, to sell its assets or merge it with any company or to make any other major change in its business or corporate structure or management.
- 7) The identity of any person employed, retained, or to be compensated by the acquiring party, or by any person on his behalf, to make solicitations or recommendations to stockholders to assist in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation.
- 8) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.
- d) When a person, other than an individual or corporation, is required to file an application under this Section, the Commissioner supervisor may require that the information required by subsections subsection (c) (1), (2), (3), and (7) above be given with respect to each person, as defined in subsection (a)(3) above, who has an interest in or controls a person filing an application under this subsection.
- e) When a corporation is required to file an application under this Section, the Commissioner may require that information required by subsections subsection (c)(1), (2), (3), and (7) above be given for the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the corporation.
- f) If any tender offer, request, or invitation for tenders or other agreements to acquire control is proposed to be made by a registration statement under the Securities Act of 1933 (15 U.S.C. 77a et seq.), or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the registration statement or application may be filed with the Commissioner instead of the requirements of this Section.
- g) Any acquiring party shall deliver a copy of any notice or application required by this Section to the savings bank proposed to be acquired within two days after such notice or application is filed with the Commissioner.
- h) Any person who willfully or intentionally violates this Section is subject to Section 11006(1) of the Act. Each day's violation shall be considered a separate violation. This subsection in no way limits investigation, examination, prosecution, conviction, levying of fines, or any other legal action or remedy carried out pursuant to any other applicable states or federal law.
- i) The Commissioner may disapprove the acquisition of a savings bank

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within 45 days after the filing of a complete application if:

- 1) The poor financial condition of any acquiring party might jeopardize the financial stability of the savings bank or might prejudice the interest of depositors, borrowers, or stockholders;
- 2) The plan or proposal of the acquiring party to liquidate the savings bank, to sell its assets, to merge it with any person, or to make any other major change in its business or corporate structure or management is not fair and reasonable to its depositors, borrowers, or stockholders or is not in the public interest;
- 3) The banking and business experience and integrity of any acquiring party would not be in the best interest of the savings bank's depositors, borrowers, or stockholders;
- 4) The information provided by the application is insufficient for the Commissioner to determine whether the acquisition should be approved or there has been insufficient time to verify the information provided and conduct an examination of the qualifications of the acquiring party; or
- 5) The acquisition would not be in the public interest.
- j) An acquisition may be made before expiration of the disapproval period if the Commissioner issues written notice of intent not to disapprove the action.
- k) The Commissioner shall set forth the basis for disapproval of any proposed acquisition in writing and shall provide a copy of such findings and order to the applicants and to the bank involved. Such findings and order shall not be disclosed to any other party and shall not be subject to public disclosure unless the findings or order are appealed and subject to hearing.
- l) Whenever such a change in control occurs, each party to the transaction shall report promptly to the Commissioner any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officers or directors.
- m) For a period of 10 years following the acquisition of control by any person, neither such acquiring party nor any associate or affiliate of the acquiring party or the acquired savings bank shall receive any loan or the use of any of the funds of, nor purchase, lease, or otherwise receive any property from, nor receive any consideration from the sale, lease, or any other conveyance of property to, any savings bank in which the acquiring party has control; except that:
  - 1) the provisions of this subsection shall not apply to transactions permitted under Sections 22(g), 22(h), 23A or 23B of the Federal Reserve Act (12 U.S.C. Sections 375a, 375b, 371c and 371c-1), or transactions with any person (including such person's affiliates and associates) after the person ceases to be in control of the savings bank, or ceases to be an affiliate or associate of a person in control of a savings bank, and



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- 2) upon application by any acquiring party or associate or affiliate or affiliated person of a savings bank or insured institution subject to this subsection, the Commissioner may approve a transaction between a savings bank and such acquiring party, person, or associate or affiliate or affiliated person of a savings bank or insured institution, upon finding that the terms of the transaction are at least as advantageous to the savings bank as the savings bank would obtain in a comparable transaction with any person that is not an acquiring party or an associate or affiliate thereof.
- n) To enable any person to purchase any or all shares of its capital stock, no savings bank shall make a loan to, pledge or otherwise transfer any of its assets as security for a loan to such person or to any associate or affiliate or affiliated person of a savings bank or insured institution, or except as otherwise permitted in this subsection, pay any dividends to any such person or associate or affiliate or affiliated person of a savings bank or insured institution except upon a finding by the Commissioner that such transaction(s) is fair to stockholders, depositors, and creditors and does not otherwise violate any provision of the Act. Nothing in this Section shall prohibit a dividend among shareholders in proportion to their shareholdings.
- o) Filing with the Commissioner of a copy of notice filed pursuant to the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) and the Rules under the Federal Deposit Insurance Corporation (12 CFR 303.4) or pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 Note et seq.), Federal Reserve Board Regulations for Bank Holding Companies, (12 CFR 225.41 et seq.) or pursuant to the Home Owners' Loan Act (12 U.S.C. Section 1461 et seq.) and the Regulations for Acquisition of Control of Savings Associations (12 CFR E-P-R--Section 574.1 et seq.).
- p) The accuracy and completeness of any information submitted by the applicant(s) may be determined by the Commissioner pursuant to the Commissioner's examination authority.

(Source: Amended, at 22 Ill. Reg. 6719, effective MAR 30 1998)

## SUBPART O: CONVERSION OF MUTUAL SAVINGS BANK TO CAPITAL STOCK SAVINGS BANK

## Section 1075.1800 Subpart Exclusive -- Prohibition on Conversion Without Approval -- Waiver of Requirements

This Subpart shall exclusively govern the conversion of mutual savings banks to capital stock savings banks. No mutual savings bank may convert to the capital stock form of organization without the prior written approval of the Commissioner pursuant to this Subpart, except that the Commissioner may waive requirements of this Subpart when a deviation from the requirements is required due to a change in applicable law, regulation or policy to effect a

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recapitalization of an undercapitalized depository institution, or due to unforeseen circumstances which leave no viable alternative course of action that complies with the requirements of this Subpart to effect a conversion that is not injurious to the converting savings bank and that is not inequitable to members. Any waiver must be upon a written finding that it complies with this Section and the written finding must include grounds as to why the waiver complies with this Section. Notwithstanding any provision of this Subpart, the Commissioner may waive a requirement of this Subpart if:

- a) waiver is required by applicable federal law or regulation;
- b) waiver avoids, ameliorates, or corrects a condition enumerated in Section 10001 of the Act or serves a purpose enumerated in Section 10002 of the Act;
- c) waiver is due to unforeseen circumstances which leave no other reasonable course of action which complies with the requirement and waiver is not injurious to the converting savings bank and not inequitable to its members; or
- d) waiver permits the converting savings bank to convert to stock form under terms or conditions available to a state or federal savings association or under terms or conditions permitted by the deposit insurance corporation.

(Source: Amended, at 22 Ill. Reg. 6719, effective MAR 30 1998)

## Section 1075.1810 Request of Noncompliance Requirements (Repealed)

- a) Notwithstanding the requirements of Section 1075.800, if an applicant finds that compliance with any provision of this Subpart would be in conflict with applicable federal law, the Commissioner shall grant a request of noncompliance with the provision. The request may be incorporated in the application for conversion; otherwise, the applicant shall file the request in accordance with the requirements of the Commissioner.
- b) In making any such request, the applicant shall:
- 1) specify the provision or provisions of this Subpart with respect to which the applicant desires a waiver, and
  - 2) furnish an opinion of counsel demonstrating that applicable federal law is in conflict with the specified provision or provisions of this Subpart.

(Source: Repealed at 22 Ill. Reg. 6719, effective MAR 30 1998)

## Section 1075.1835 Stock Purchase Subscription Rights -- Eligible Account Holders

- a) Each eligible account holder shall receive, without payment, a nontransferable subscription rights to purchase capital stock in an



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amount ranging from one-tenth of one percent to five percent of the total offering, with each receiving subscription rights to the same percentage of capital stock; or in an amount that reflects a proportioned amount that is based on the amount of the eligible account holder's qualifying deposit relative to the total amount of qualifying deposits. The allocation of subscription rights to purchase shares of capital stock under this subsection shall not give the directors in the aggregate subscriptions equal to more than 20 percent of the total offering.

- b) When a conversion plan is effected pursuant to Section 1075.2170, the total number of shares refers to that number of shares not sold to the acquiror or acquirors designated in the plan.
- c) If the allotment made in this Section results in an oversubscription, the plan of conversion may provide that shares be allocated first to directors, officers and employees who have been account holders for the entire 5 years before the conversion. However, the Commissioner may waive the five-year requirement for an individual upon a written finding that the individual who has not been a five-year account holder participated in and greatly contributed to rehabilitating the savings bank or that the waiver is necessary to maintain the savings bank's independent ownership. Any shares not allocated to such directors, officers and employees shall be allocated among other subscribing eligible account holders on such equitable basis, related to the amounts of their qualifying deposits, as may be provided in the plan of conversion. For the purposes of shares allocated pursuant to the immediately preceding sentence, directors may be allocated additional shares in the same manner as other eligible account holders.

- d) If the allotment in this Section results in an undersubscription, the plan of conversion may provide that the directors, officers and employees of the savings bank who are eligible account holders receive, without payment, nontransferable subscription rights to purchase unallocated shares of capital stock. The subscription rights shall be allocated among directors, officers and employees on an equitable basis such as by giving weight to period of service, compensation, or position.

(Source: Amended at 22 Ill. Reg. 6719, effective MAY 30 1993)

Section 1075.1845 Supplemental Share Purchase Subscription  
Rights -- Supplemental Eligible Account Holder -- Conditions

- a) In plans with an eligibility record date that is more than 15 months before the date of the latest amendment to the application for conversion filed before the Commissioner's approval, a supplemental eligibility record date shall be determined whereby each supplemental eligible account holder of the converting savings bank shall receive,

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without payment, nontransferable subscription rights to purchase shares in an amount ranging from one-tenth of one percent to five percent of the total offering, with each receiving subscription rights to the same percentage of capital stock, or in an amount that is based on a proportioned amount that is based on the amount of the eligible account holder's qualifying deposit relative to the total amount of qualifying deposits in the converting savings bank on the supplemental eligibility record date. When a conversion plan is effected pursuant to Section 1075.2170, the total number of shares refers to that number of shares not sold to the acquiror or acquirors designated in the plan.

- b) Subscription rights received pursuant to this Section shall be subordinated to all rights received by eligible account holders to purchase shares pursuant to Sections 1075.1835 and 1075.1840.
- c) Any nontransferable subscription rights to purchase shares received by an eligible account holder in accordance with Sections 1075.1835 and 1075.1840 shall be applied in partial satisfaction of the subscription rights to be distributed pursuant to this Section.

- d) In the event of an oversubscription for supplemental shares pursuant to this Section, shares shall be allocated among the subscribing supplemental eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion.

- e) A director or officer of the converting savings bank shall be entitled to subscription rights as a supplemental eligible account holder only if:

- 1) such person is not also an eligible account holder entitled to subscription rights under Section 1075.1835; and
- 2) such person became a director or officer of the converting savings bank after the eligibility record date established under Section 1075.1875.

(Source: Amended at 22 Ill. Reg. 6719, effective MAY 30 1993)

## Section 1075.2040 Vote by Members

- a) Following approval of the plan of conversion by the Commissioner, the plan of conversion shall be submitted for consideration to an annual or special meeting of members.

- b) Notice of the meeting to consider a plan of conversion shall be given by the proxy statement authorized for use by the Commissioner. For the purposes of this subsection, the proxy statement may be in summary form, provided:

- 1) A statement is made in bold-face type on the notice to members required under this subsection that a more detailed description of the proposed transaction may be obtained by returning an attached postage-paid postcard or other written communication

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2) If the latest balance sheets furnished under subsection (a)(1) above are in excess of 135 days before the date of the Commissioner's approval of the conversion, there shall be furnished an interim balance sheet as of a date within 135 days after of such approval. This interim balance sheet need not be audited.

b) Consolidated statements of income and cash flows.

1) There shall be furnished for the applicant and its subsidiaries and predecessors consolidated, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent balance sheet furnished. Notwithstanding the requirement of submitting consolidated statements for the preceding three fiscal years, if the applicant would qualify as a "Small Business Issuer" under U.S. Securities and Exchange Commission Regulation S-B, 17 CFR 226, the applicant may furnish consolidated statements for the periods that would be required of a small business issuer if the applicant complies with all other provisions of Sections 1075.2370 and 1075.2440 and includes a two-year balance sheet in its proxy statement and offering circular.

2) In addition, for any interim period between the latest audited balance sheet and the date of the most recent interim balance sheet being filed, and for the corresponding period of the preceding fiscal year, statements of income and cash flows shall be furnished. The interim financial statements may be unaudited.

c) Changes in stockholders' equity. An analysis of the changes in each caption of stockholders' equity presented in the balance sheets shall be given in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which an income statement is required to be furnished with all significant reconciling items described by appropriate captions.

d) Financial statements of business acquired or to be acquired. There shall be furnished the information required by 17 CFR 210.3-05 and 17 CFR 210.11-01 to 210.11-03 -03, 1992, no subsequent dates or editions, regarding business acquired or to be acquired.

e) Separate financial statements of subsidiaries not consolidated and 50-percent- or less-owned persons. There shall be furnished the information required by 17 CFR 210.3-09 regarding separate financial statements of subsidiaries not consolidated and 50-percent- or less-owned persons.

f) Filing of other statements in certain cases. The Commissioner may, upon the request of the applicant, and where consistent with the protection of account holders and others, permit the omission of one or more of the statements required or the filing in substitution therefor of appropriate statements of comparable character. The Commissioner may also require the inclusion of other statements in addition to, or in substitution for, the statements herein required in

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requesting a supplemental information statement which, together with the summary proxy statement, complies with the requirements of this Subpart:

2) The last date on which the summary proxy statement is mailed to members will be considered the date on which notice is given for the purposes of this subsection. Without prior approval by the Commissioner, the special meeting of members shall not be held fewer than 20 days after the last date on which the supplemental information statement is mailed to requesting members;

3) The supplemental information statement required to be furnished to members may be combined with any form prescribed under Sections 1075.2500 through 1075.2580, if the subscription offering is started concurrently with or during the proxy solicitation period pursuant to Section 1075.1925(a);

4) The summary proxy statement shall be prepared in accordance with the following requirements:

A) All the requirements of Sections 1075.2300 through 1075.2460, except:

- i) Section 1075.2360;
- ii) Section 1075.2370(c) through (m) and (o);
- iii) Section 1075.2440; and
- iv) Section 1075.2450(b).

B) The disclosure requirements of Sections 1075.2380(j), 1075.2390 and 1075.2430 may be prepared in summary form.

C) The disclosure requirements of Section 1075.2350 may be met through disclosure of the names, ages, and present occupations of all directors and executive officers.

D) The plan of conversion shall not be required to be attached to the summary proxy statement under Section 1075.2460.

c) The plan of conversion shall be approved by a vote of at least a majority two-thirds of the total outstanding votes.

(Source: Amended at 22 Ill. Reg. 6719, effective MAR 30 1990)

## Section 1075.2440 Proxy Statement -- Financial Statements

This Section specifies the consolidated balance sheets, the consolidated statements of income, the consolidated statements of cash flows, and stockholders' equity required to be included in the proxy statement. If the applicant has previously used an audit period in connection with its certified financial statements which does not coincide with its fiscal year, such audit period may be used in place of any fiscal year requirements provided it covers a full twelve months' operations and is used consistently.

a) Consolidated balance sheets.

1) There shall be furnished for the applicant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years.

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any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of account holders and others.

(Source: Amended at 22 Ill. Reg. 0719, effective MAR 30 1998)

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF WITHDRAWAL OF PROPOSED AMENDMENT(S)

- 1) Heading of the Part: Minimum Standards for Licensure of Community Residential Alternatives
- 2) Code Citation: 59 Ill. Adm. Code 113
- 3) Section Numbers:  
113.50  
113.140  
Proposed Action:  
Amended  
Repealed
- 4) Date Notice of Proposed Amendments Published in the Illinois Register:  
June 6, 1997 (21 Ill. Reg. 6689)
- 5) Reason for the Withdrawal: P.A. 90-423, approved and effective August 15, 1997, repealed the Community Residential Alternatives Licensing Act [210 ILCS 140M] which part 113 implements. This new legislation provides that all community residential alternatives shall be regulated by the Community Integrated Living Arrangements Licensure Act [210 ILCS 135]. The Notice of Proposed Repealer for the Department's rules at 59 Ill. Adm. Code 113 appears elsewhere in this issue of the *Illinois Register*. With the repeal of Part 113, community residential alternatives shall be regulated by the Department's rules at 59 Ill. Adm. Code 115.

Note: This rulemaking was recodified from the Department of Mental Health and Developmental Disabilities to the Department of Human Services at 21 Ill. Reg. 9321, effective July 1, 1997.



ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF MODIFICATION TO MEET THE RECOMMENDATION OF THE JOINT COMMITTEE ON ADMINISTRATIVE RULES

- 1) Heading of the Part: Procedures for Collection of Air Pollution Site Fees
- 2) Code Citation: 35 Ill. Adm. Code 251
- 3) 

<u>Section Numbers:</u>	<u>Action:</u>
251.101	Amended
251.103	Amended
251.201	Amended
251.203	Amended
251.208	Amended
251.301	Amended
251.310	Amended
- 4) Date Notice of Proposed Rules Published in the Register (if applicable):  
July 11, 1997, 21 Ill. Reg. 8759
- 5) Date JCAR Recommendation Published in the Register: March 6, 1998, 22 Ill. Reg. 4512
- 6) Summary of Action Taken by the Agency: The Agency responded to the recommendation by agreeing to amend its rules in a timely manner when needed to be consistent with changes in statutory provisions.

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF OBJECTION TO  
EMERGENCY RULEMAKING

STATE BOARD OF EDUCATION

Heading of the Part: School Construction Program

Code Citation: 23 Ill Adm Code 151

Section Numbers: 151.50(a)(2)

Date Originally Published in the Illinois Register: 1/30/98  
22 Ill Reg 2616

At its meeting on March 24, 1998, the Joint Committee on Administrative Rules objected to Section 151.50(a)(2) of the State Board of Education's emergency rule entitled School Construction Program (23 Ill. Adm. Code 151, 22 Ill. Reg. 2616), because that portion of the emergency rule, as modified, does not include the standards the State Board will use to determine when a ranking is "warranted". The Committee's concern, expressed through an earlier Objection, is that SBE not add another level of ranking when sufficient funding is available for all approved projects. The current text, by speaking of ranking when "warranted", is not sufficiently specific.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall be deemed a refusal. The agency's response will be placed on the JCAR agenda for further consideration.

## OFFICE OF BANKS AND REAL ESTATE

## NOTICE OF PUBLIC INFORMATION

## NOTICE OF FINE IMPOSED UNDER

## THE RESIDENTIAL MORTGAGE LICENSE ACT OF 1987

Pursuant to Section 4-5(g) of the Residential Mortgage License Act of 1987 ("the Act"), 205 ILCS 635/4-5(g) (1996), notice is hereby given that the Commissioner of the Office of Banks and Real Estate of the State of Illinois has issued a fine of \$10,000.00 against American Home Loans, Santa Ana, California, a licensee under the Act, for violating the terms of the Act and the rules and regulations adopted thereunder.

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

## SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of March 24, 1998 through March 30, 1998 and have been scheduled for review by the Committee at its April 21, 1998 meeting in Springfield. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rule should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

Second Notice Expires	Agency and Rule	Start of First Notice	JCAR Meeting
5/7/98	Secretary of State, Regulations Under the Business Opportunity Sales Law of 1995 (14 Ill Adm Code 135)	2/6/98 22 Ill Reg 2763	4/21/98
5/9/98	Secretary of State, Certificates of Title, Registration of Vehicles (92 Ill Adm Code 1010)	1/23/98 22 Ill Reg 2080	4/21/98
5/9/98	Department of Commerce and Community Affairs, Illinois Promotion Act Programs (14 Ill Adm Code 510)	1/23/98 22 Ill Reg 2007	4/21/98
5/9/98	Department of Natural Resources, Forestry Development Cost-Share Program (17 Ill Adm Code 1536)	2/6/98 22 Ill Reg 2651	4/21/98
5/9/98	Department of Natural Resources, Surface Mined Land Conservation and Reclamation Act (62 Ill Adm Code 300)	2/6/98 22 Ill Reg 2668	4/21/98
5/10/98	Department of Commerce and Community Affairs, Local Tourism and Convention Bureau Program (14 Ill Adm Code 550)	1/9/98 22 Ill Reg 1062	4/21/98
5/13/98	Environmental Protection Agency, Repeal of Joint Rules of the Illinois Environmental Protection Agency, the Illinois Dept of Public Health and the Illinois Dept of Nuclear Safety: Certification and Operation of Environmental Laboratories (35 Ill Adm Code 183)	1/2/98 22 Ill Reg 23	4/21/98

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

5/13/98	Department of Natural Resources, White-Tailed Deer Hunting by Use of Firearms (17 Ill Adm Code 650)	2/6/98 22 Ill Reg 2690	4/21/98	23-2764-6 23-2765-6 23-2771-6 23-2790-6 32-330-14 32-331-3 32-420R-7 32-422-7 32-610R-3 35-183R-1 35-190R-2 35-195R-2 35-201-15 35-215-8 35-218-2 35-220-15 35-240-6 35-304-7 35-811-9 35-813-9 35-848-9 38-110-7 38-130-14 38-140-7 38-160-7 38-190-14 38-390R-1 44-750-12 44-1150-15 44-1300-15 50-806-11 50-930-12 50-4401-13 50-4402-13 50-4405-13 50-4415-5 50-4435-6 56-2665-5 59-50-1 59-113R-15 62-240-4,5 62-1701-12	62-1761-12 62-1764-12 62-1773-12 62-1774-12 62-1778-12 62-1785-12 62-1800-12 62-1816-12 62-1817-12 62-1823-12 62-1825-12 62-1840-12 62-1847-12 62-1850-12 62-2501-15 68-900R-8 68-1150-11 68-1220-4 68-1230-11 68-1247-8 68-1252-7 68-1275-6 68-1285-8 68-1350-14 71-40-11 74-730-2 74-750-2 77-205-5 77-245-14 77-250-14 77-300-14 77-330-14 77-340-14 77-350-14 77-370-14 77-390-14 77-515-8 77-600-3 77-672-6 77-675-13 77-680R-13 77-681R-13	77-685-13 77-693-9 77-697-9 77-775-13 77-845-5 77-855R-11 77-855-11 77-870-5 77-890-15 77-905-15 80-1540-15 80-3000-11 83-416-4 83-506-4 83-650-1 86-100-1 86-130-4,7 86-495-1 86-516-1 86-750-2 86-800-15 86-1910-8 86-3000-1 89-101-1 89-112-10,14 89-113-4,5 89-120-1,2 89-121-3 89-140-1,8 89-148-189-160-14 89-679-4 89-1100-7 92-440-13 92-443-6 92-445-5 92-541-15 92-1010-4 92-1020-15 92-1040-12
5/13/98	Department of Natural Resources, White-Tailed Deer Hunting by Use of Muzzleloading Rifles (17 Ill Adm Code 660)	2/6/98 22 Ill Reg 2708	4/21/98			
5/13/98	Department of Natural Resources, White-Tailed Deer Hunting by Use of Bow and Arrow (17 Ill Adm Code 670)	2/6/98 22 Ill Reg 2678	4/21/98			

ADOPTED  
2-926-2



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35-211-7	50-4203-11	89-230-7	89-112-10
35-218-7	50-4430-15	89-240-7	89-120-2
35-219-7	50-5421-15	89-402-1	89-121-3
35-251-15	50-5100-4	89-407-3	89-679-4
35-302-2	56-2660-2	89-437-12	
35-303-2	56-5300	89-682-4	<b>PEREMPTORY</b>
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